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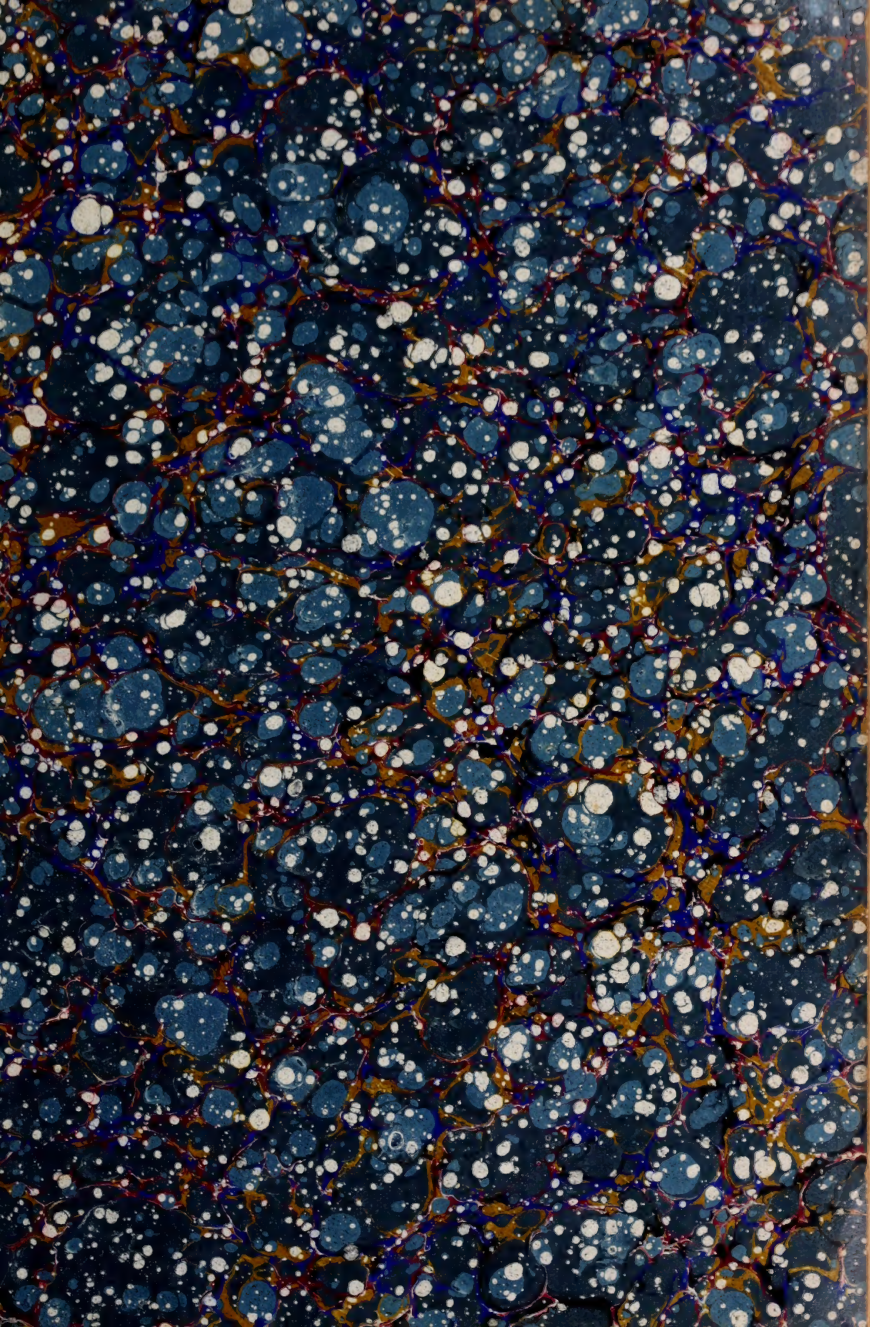
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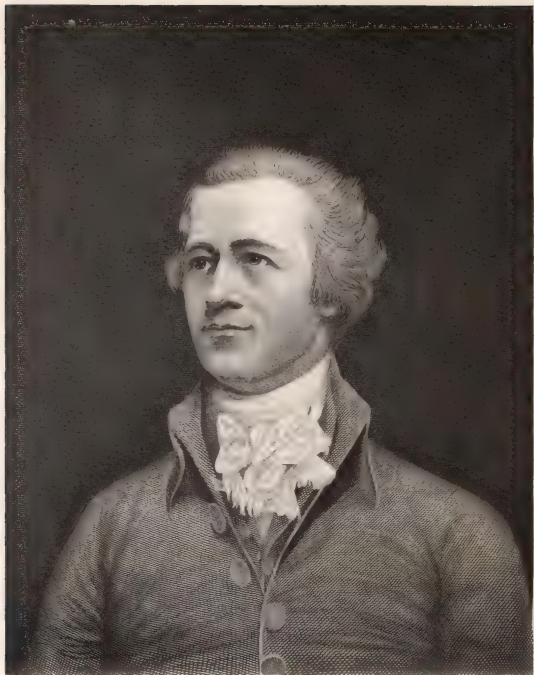
HISTORY OF THE  
BENCH AND BAR OF NEW YORK



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# HISTORY OF THE BENCH AND BAR OF NEW YORK

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## STATE OF JURISPRUDENCE DURING THE DUTCH PERIOD, 1623—1674.



PURCHASE OF MANHATTAN ISLAND.



FORTY YEARS ago, I wrote as an introduction to the first volume of the reports of the Court of Common Pleas of the City of New York, of which I

was then a member, a history of the Court, which was the oldest in the State, having been established by the Dutch in 1653. When this introduction was written little was known respecting our early judicial tribunals. Our first historian, Chief Justice Smith, devoted but a few pages to the Dutch period and had nothing to communicate respecting it, but the founding of the colony by the Dutch, the encroachment upon it by the settlers from New England on Long Island, and the particulars of its surrender to the English in 1664. David Graham, in 1834, published a work on the jurisdiction of our courts, in which he simply copied what he found in Smith, and went so far as to assume that there was nothing remaining to show what courts existed among the Dutch, or which would shed any light upon the manner in which



justice was administered by them.<sup>1</sup> He appears to have relied upon the absence of any information in Smith's history and to have made no investigation himself, for, on the contrary, the records, in the Dutch language, of the Court that existed from the first establishment of a regular judicial tribunal, in 1653, to the end of the Dutch period, have always remained in the City of New York. In 1848, Dr. O'Callaghan published a "History of New Netherland," the name by which New York was known under the Dutch, but it contained little respecting the Courts. The first volume of Brodhead's history of the State, which appeared in 1853, contained much more, but it was of a general kind and gave little or no information as to the nature of the Courts, the mode of proceeding, or the way in which justice was administered.

This information I undertook to supply in the introduction referred to, and to connect with it, a sketch, at least, of the judicial tribunals from the commencement of the English period to the adoption of the State Constitution, in 1846; a task then of labor and difficulty, for the colonial documents, copies of which Mr. Brodhead had brought from Holland and from England, had not then been printed. An investigator at the present day, with the aid of Dr. O'Callaghan's admirable index, can turn at once, to any one of these ten bulky volumes, for what he is in pursuit of; but I had to go over the whole of these documents in manuscript, and as there was no index, to read them from beginning to end, to discover what was contained in them relating to my enquiry, and in re-reading now, for the purpose of revision of what I then wrote respecting the Dutch period, it is gratifying to find how little there is to amend or to be added.

I was asked by the editors of the present work to write an article for it on the Dutch period. To write an independent article would be to repeat what I have already written, to so great an extent, that I thought the better course, after a lapse of forty years, would be to revise what I had previously written, as more acceptable and a sufficient compliance with their request; which I have done in what follows.

CHARLES P. DALY.

June 20, 1895.

The colony of New Netherland was planted by the West India Company, a commercial corporation of Holland. This corporation had obtained from the States General an exclusive charter or patent,<sup>2</sup> to

<sup>1</sup> Graham, on the Jurisdiction of Courts of Law and Equity in the State of New York, Ch. 3.

<sup>2</sup> The charter here referred to was granted by the States-General of Holland in 1621, to the Dutch West India Company. That shown in fac-simile is still earlier. It was granted by the States-General October 11, 1614, and is the first official document in which the name "New Netherland" appears. In March, 1614, the States-General published a decree to encourage expeditions of discovery under the title of a "General Charter for those who discover New Passages, Havens, Countries or Places," October 11, following, Adriaen

Block, just returned from his voyage to these parts, appeared with the shipowners associated with him before the States-General. A charter was at once drawn up giving these persons, "all now united into one company," the right to traffic in the recently discovered "new lands situated in America, between New France and Virginia . . . and now called New Netherland." A fac-simile of this charter is given on p. 3. It will be found translated in Volume i. of the "Memorial History of New York" and Volume i. of the "Documents Relating to the Colonial History of New York."

EDITOR.







in providing for their immediate wants, that there could be little, if any, occasion for organizing a judicial tribunal. In 1626, Minuit came out as governor. He had, to assist him, a council of five, who, with himself, were invested with all legislative, executive and judicial powers, subject to the supervision and appellate jurisdiction of the chamber at



CITY HALL, AMSTERDAM, PRIOR TO 1615.

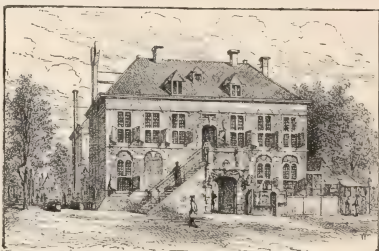
Amsterdam.<sup>1</sup> There was also attached to this body an officer, well known in Holland by the title of the Schout Fiscal. He was a kind of attorney general, uniting with the power of a prosecuting officer the

<sup>1</sup> Brodhead, 162. This council had criminal jurisdiction to the extent of fine, &c.



THE "HALF-MOON."

1637. In what manner judicial proceedings were conducted is unknown. Records were kept under Van Twiller, but they are now irretrievably lost.<sup>2</sup> His schout fiscal, however, Lubbertus Van Dinclage, was a doctor of laws, and a man of ability; and as long as he continued to act, it may fairly be presumed that the management of judicial matters was under his charge. In 1630, extensive grants of lands in New Netherland were made by



HOUSE OF WEST INDIA COMPANY, AMSTERDAM.

<sup>1</sup> He was charged specially with enforcing and maintaining the placards, ordinances, resolutions and military regulations of the high mightinesses, the States General, and protecting the rights, domains and jurisdiction of the company, and executing the orders as well in as out of court, without favor or respect to individuals; he was bound to superintend all prosecutions and suits, but could not undertake any actions on behalf of the company, except by order of the council, nor arraign nor arrest any person upon a criminal charge, unless upon information previously received, or unless he caught him in *flagrante delicto*. In taking information, he was bound to note as well those points which made for the persons as those which supported the charge against him, and after trial, he was to see to the faithful and proper execution of the sentence, pronounced by the judges, who, in indictments carrying with them loss of life and property, were not to be less than five in number. He was, moreover, specially obliged to attend to the commissions arriving from the company's outposts, and to vessels arriving from or leaving for Holland, to inspect their papers, and superintend the loading and discharging of the cargoes, so that smuggling might be prevented; and all goods introduced, except in accordance to the company's regulations, were at once to be confiscated. He was to transmit to the directors of Holland, copies of all information taken by him, as well as of all sentences pronounced by the court, and no person was to be kept long in prison, at the expense of the company, without special cause, but all were to be prosecuted as expeditiously as possible before the director and council.

executive duties of a sheriff; a more particular enumeration of whose duties, from the careful compilation of Dr. O'Callaghan, will be found in a note.<sup>1</sup>

To the governor, his council, and the schout fiscal, the administration of justice was left during the six years that Minuit was governor, and the four years of his successor, Van Twiller, that is, from 1626 to

He was strictly forbidden to accept presents or gifts from any person whatsoever, and had to content himself with the civil fines and penalties adjudged to him, and such part of the criminal fines and confiscated wages of the company's servants as the director and council, after prosecution, might allow. He was not to have any part, however, of captured prizes or confiscated goods.

<sup>2</sup> Mr. Brodhead informed the writer that when, in pursuance of an act of the Legislature, he was sent to Holland in 1841, to collect information respecting our early colonial history, he found that the voluminous archives of the Dutch West India Company had been sold but a few years before his arrival, as waste paper. Had the legislature acted upon the suggestion of Governor Clinton, in 1816, the records of this company, covering the whole period of the Dutch dynasty, and including all the private correspondence between the directors in Amsterdam and their agents in New Netherland, would, upon request, have been willingly presented to the State, by the Dutch government. The sale had been so recent, that Mr. B. was enabled to discover some of the purchasers; but he found in the process of sale and resale, that the papers had passed into the hands of innumerable small dealers in the Dutch metropolis, and had been used as wrappers for merchandise, and that the great bulk of them had been scattered and appropriated to similar uses, along both banks of the Rhine. In the indefatigable search which he instituted, he was enabled to rescue some fragments, but the amount obtained was very trifling.

the West India Company, to certain patroons, who were invested with the feudal privileges of manorial lords. They were authorized to erect courts of justice, and courts known as the patroons' courts were accordingly established, exercising unlimited civil and criminal jurisdiction within the patroons' territory. In these tribunals the patroon presided in person or by deputy. He was clothed with the power of life and death, and could decide all civil suits arising within his jurisdiction, subject—where he rendered judgment for a sum exceeding fifty guilders—to an appeal to the director general and council of New Amsterdam. This right of appeal was reserved by the original



THE "HALF-MOON" LEAVING AMSTERDAM.

charter, under which the patroons held, but it was practically defeated by exacting from the tenants, before they came upon the manor, a condition that they would in no case appeal from the judgment of the manorial court.<sup>1</sup>

In 1638, William Kieft was appointed governor. This governor was a grasping, arbitrary, narrow-minded man, full of his own importance, with a restless activity that was never turned in any right direction,

<sup>1</sup> Brodhead, 304.



or applied to the accomplishment of any wise purpose. During the nine years that he misgoverned the colony, he retained in his hands the sole administration of justice. In obedience to his instructions, it was necessary that he should keep up the form of a council, but that he might enjoy exclusive control, he reduced it to one member, reserving two votes to himself.<sup>1</sup> In 1640, a charter of exemptions and privileges, designed to encourage emigration, was adopted by the College of Nineteen, in which it was declared that the governor and council should decide all questions respecting the rights of the company, and all complaints, whether by foreigners or inhabitants of the province; that they should act as an orphan's and surrogate's court, judge in criminal and religious affairs, and administer law generally. In conformity with the charter, Kieft directed that the council should sit every Thursday, as a court of justice, for "the hearing and adjudication of all civil and criminal processes, and for the redress of all grievances of which anyone



VIEW OF AMSTERDAM AND HARBOR.

might have to complain ;" and he established certain rules for securing the attendance of parties, and for the general conduct of business.<sup>2</sup> In a court thus constituted, guided and controlled by a man vain, rapacious and vindictive, it may readily be imagined in what way justice was administered. He enacted laws, levied fines, or inflicted penalties according to his will. The schout fiscals, of whom there were two during his governorship, Ulrich Lupold and Cornelius Vander Huygens, were occasionally invited to be present at the sittings of the council, but neither they nor his counsellor, Doctor Johannes La Montague, a learned Huguenot physician, appeared to have had much weight with him. Ever involved in trouble, either with the natives or with the colonists, he was constantly inflicting fines, confiscations and banishments; and though an appeal lay from his judicial decisions to the

<sup>1</sup> Brodhead, 327.

<sup>2</sup> 1 O'Call. 184. Brodhead, 277.

chamber of Amsterdam, he effectually cut it off by subjecting to fine or imprisonment anyone who attempted to resort to it.<sup>1</sup> Such an administration was fruitful at least of one result. It stirred up the colonists to demand the establishment of judicial and municipal tribunals, similar to those which they had enjoyed in Holland. There had existed in every town and village in Holland, for more than a century, a local tribunal of a highly popular character. It united the twofold functions of a court of justice and of a municipal government, and consisted of a bench of magistrates, denominated burgomaster and schepens, with whom were associated a schout, whose especial duty it was to prosecute all offenders before the court, and to carry into execution its resolves or decrees. The burgomaster was a kind of mayor. The schepen resembled an alderman, and the schout performed the duties which, under our system, are respectively assigned to sheriffs and district attorneys. The principle of popular representation was recognized in the composition of this body. The mode of appointment was not uniform throughout Holland; but generally the inhabitants of the town who were possessed of a certain property qualification, assembled annually in a town council or "*Vroedschap*," and elected eight or nine "good men," and this representative body chose the burgomaster and schepens. The schout, under the feudal law, was appointed by the count or manorial lord, though in certain places, as in the city of Amsterdam, he was chosen by the burgomaster and schepens.<sup>2</sup>



KIEFT'S MODE OF PUNISHMENT.

<sup>1</sup> Riker's *Annals of Newtown*, 23.

Breeden Raedt (*Broad Advice*), printed at Antwerp, 1650, and attributed to Cornelius Melyn, president of the "board of eight men." This rare tract has been translated by Henry C. Murphy, Esq., and a few copies have been printed for private circulation, by James Lennox, Esq.

Vertoogh, Van N. N., printed at the Hague, 1649, and attributed to Adrian Van der Donck. This has also been translated by Mr. Murphy, and printed, together with the Breeden Raedt, by Mr. Lennox, and by the N. Y.

Hist. Soc. 2 Coll. 2d series, 251. Brodhead, 277. A translation will also be found in the Holland documents, iv. 74.

<sup>2</sup> *Esprit Origine et Progress des Institutions Judiciaires des principaux pays de l'Europe*, par J. D. Myer, Paris, 1823; tome iii., livre 5, coup d'oeil, sur l'etat, politique des Pays Bas. chap. 11, 253, chap. 14, 387. *Placards of Hollande*, vol. ii. 685. Van Leuwen's *Roman Dutch Law*, book 1, chap. ii. §§ 19, 20, 21. Vander Linden's *Institutes of Holland*, part 1, book 3, chap. 1. O'Call. i. 391; ii. 210. Brodhead, 453.

Kieft wished to go to war with the Indians, but unwilling to take the entire responsibility of such a step, he deemed it prudent to call the community together and submit the question to them. The heads of families met, and according to the custom of Holland, selected twelve men to represent them. This representative body assented to the war; but, at the same time, presented a memorial to the governor, demanding among other reforms, the establishment of courts of justice similar to those which existed in the towns and villages of Holland.<sup>1</sup> This privilege Kieft felt no disposition to grant, and after evading the request for some time, he finally got rid of it by dissolving the popular body. Two



SHIP "NEW NETHERLAND,"

years later, however, having by his rashness and folly brought the colony to the brink of ruin, he found it necessary again to convoke the community. They met as before, and selected "eight men" to advise upon the state of affairs. This second representative council did not trouble Kieft with any further requests, but they addressed an earnest memorial to the College of Nineteen, and to the States General, describing the condition of the colony, and demanding a new governor, and the establishment in New Amsterdam of a burgher government, according to the custom and usage of Holland; a request that produced no other effect but the recall of Kieft and the appointment of Stuyvesant.<sup>2</sup>

Peter Stuyvesant came out as governor in 1647. Van Dinclage, who had acted as schout fiscal under Van Twiller, came with him in the capacity of vice director, and Hendrick Van Dyck as schout fiscal. Immediately after his arrival, Stuyvesant established a court of justice, of which Van Dinclage was made the presiding judge, having associated with him occasionally, others of the company's officers. The new tribunal was empowered to decide "all cases whatsoever," subject only to the restriction of asking the opinion of the governor upon all momentous questions, who reserved to himself the privilege which he frequently

<sup>1</sup> Brodhead, 336.

<sup>2</sup> Brodhead, 364.

<sup>3</sup> "The ship, 'New Netherland,' a vessel of two hundred and sixty tons, three times the size of Hudson's 'Half-Moon,' brought the first colonists to New Amsterdam—the Walloons.

exercised, of presiding in the court, whenever he thought proper to do so.<sup>1</sup>

The desire for a popular form of government became so strong after Stuyvesant's arrival that he found it necessary to make some concession. He allowed the commonalty to elect eighteen persons, from whom he selected nine, as a permanent body to advise and assist in public affairs. This body, who were known as the board of the nine men, had certain judicial powers conferred upon them. Three of their number attended in rotation upon every court day, to whom civil cases were referred as arbitrators, and their decision was binding upon the parties, though an appeal lay to



HOUSE OF WEST INDIA COMPANY ON THE RAAPENBURG, AMSTERDAM.

the governor and council, upon the payment of one pound Flemish. These tribunals, with the manorial courts before referred to, constituted the judicial organization of the colony for seven years afterwards.

The government of Stuyvesant but increased the popular discontent. Though a man of capacity and integrity, he was unfitted for the place assigned him, or his duty as the careful guardian of the pecuniary interests of a commercial corporation was inconsistent with the just and politic rule of a people like the colonists, who had their own views as to the manner in which a community should be governed. It was natural that they should desire to live under institutions to which they had been accustomed in Holland, and which, whatever might be their advantages or defects, had to them the merit of nationality, and were associated with their earliest recollections. This Stuyvesant did not, or would not, see. Strongly conservative himself by nature, and long used to military rule, he saw in a demand so just and reasonable, nothing but a desire to break loose from the restraints of lawful authority. Though not an unjust man, he felt himself warranted in resorting to any means to crush everything in the shape of popular encroachment, and as he was both prompt and energetic, his government became insufferably oppressive. Before the end of two years he was in open collision, not only with the board of nine men, but with the schout fiscal, Van Dyck, and the vice-director, Van Dinslage, an enlightened and learned man, and the most influential member of his council. The

<sup>1</sup> Breeden Raedt, extracts in 4 Doc. Hist. of N. Y. 69. Albany Rec. 20, 28, 29, 38, 56 to 61. 2 O'Call. 24 to 31. Brodhead, 467, 523, 532.



council he was enabled to control, but not so with the popular body. In one of its members, Adrian Van der Donck, he had to cope with a

26 July  
1784

## Groot Machtighe Hooghe en Mooghe Souverayn etc.

Wij dat de bidroefde geloofgenotheden, dat wy in lyn. Ons gelyck on-  
geoorloofde hebben, den sechtien ten brande des lands, te sime nuchteren,  
en redres daer voor te verrijt sullen. Seu hebben wy noodig gelyck eenigst  
personen dat wy wisten te sinnen dat wy wisten te sinnen, dat sych  
vroem endt geloof wat dreyt al wesen, Oock wil de vaderen endt  
kent in de gelygenotheden des lands: ten endt sy gelyc Hoo Moo:  
in dien sulc gelyc wil gelyc in gelyc in mocht wesen, als ins endt  
in alle gelygenotheden, na d'el verheerlyng en vrye linge mocht in gelyc  
in de Oock sy gelyc Hoo: Moo: in d'el redres en gelyc aenlyden  
Soo ist, dat wy by d'el d'el bidden endt d'el sychen dat  
gelyc Hoo: Moo: d'el d'el sychen, te wisten in d'el d'el d'el  
Jacob van Conynghen endt Jan C. v. Bont: D'el d'el sychen  
en voll machten, gelyc in d'el gelyc in alle wat sy d'el d'el  
gelyc d'el d'el sychen sullen, alsoo wy yet wisten in d'el d'el  
te wesen, te gelyc in d'el d'el sychen, Oock wil te d'el d'el  
lands d'el d'el sychen. Sacht Hoo: Moo: sychen d'el d'el  
d'el d'el, gelyc in d'el d'el sychen, te wisten in d'el d'el  
en wy sych in d'el d'el sychen Hoo: Moo: gelyc in d'el d'el

Wij niet als gelyc wy ons oock verjoent aenlyc d'el d'el d'el  
sychen: in d'el d'el van d'el d'el d'el d'el d'el d'el d'el d'el  
d'el d'el: sychen d'el d'el d'el d'el d'el d'el d'el d'el d'el  
sychen gelyc in d'el d'el d'el d'el d'el d'el d'el d'el d'el  
wisten wy d'el d'el d'el d'el d'el d'el d'el d'el d'el  
d'el d'el d'el d'el d'el d'el d'el d'el d'el d'el d'el  
en voor d'el d'el d'el d'el d'el d'el d'el d'el d'el  
in d'el d'el d'el d'el d'el d'el d'el d'el d'el d'el  
Actum den 26. July. 1784. in d'el d'el d'el d'el d'el d'el  
tans in d'el d'el d'el d'el d'el d'el d'el d'el d'el

Augustin Herrman  
Arnoldus van Harenere

Oliff Petersen

Maarten d'el d'el

Wout d'el d'el

Elbert d'el d'el

Govert d'el d'el

Gedrick d'el d'el



man whose ability and energy were equal to his own. Instigated by Van der Donck, the board of nine men resolved to send a delegation to Holland, but they had no sooner decided upon this step than Stuyvesant arrested its projector, seized his papers, and procured a decree of the council removing him from his position as one of the popular representatives. But this violent and arbitrary measure did not produce the effect expected. The nine men met together, a spirited remonstrance was prepared to the States General, and three of the number, of whom Van der Donck was one, went with it as a deputation to Holland.

This mission was so far successful, that in 1650 a provisional order was made by the States General, which among other things decreed that a court of justice should be erected in New Netherland, and that a burgher government should be established in New Amsterdam, to consist of two burgomasters, five schepens and a schout, and that in the mean time, or for three years, the nine men should continue to exercise judicial powers in the trial of civil causes.<sup>1</sup> This order was resisted by the Amsterdam chamber as a violation of the privileges granted by their charter, and Stuyvesant, no doubt under instructions from them, refused to obey it.<sup>2</sup> When it was known at New Amsterdam that Stuyvesant would not comply with the order, the nine men again appealed to the home government, and Van der Donck, who had remained in Holland, appeared as their advocate before the States General. A long struggle ensued, during which Stuyvesant grew more violent and unreasonable. He imprisoned Van Dincklage for uniting with Van der Donck in a protest to the States General, dismissed the schout fiscal, Van Dyck, from office, for co-operating with the nine men, and followed up these arbitrary and illegal acts by equally violent measures against other leaders of the popular movement.<sup>3</sup> The Amsterdam chamber, who regarded the establishment of a burgher court as likely to prove detrimental to the interests of their commercial monopoly, employed every means to counteract the efforts of Van der Donck; but after maintaining the contest for two years, they at last thought it prudent to yield, and signified to Stuyvesant their assent to the wishes of the colonists. The inhabitants of New Amsterdam were to be allowed to elect a schout, two burgomasters and five schepens, "as much as possible according to the custom of old Amsterdam," and the magistrates thus elected, were to compose a municipal court of justice, subject to the right of appeal to the supreme court of the province. "We have resolved," they wrote to Stuyvesant, "to permit you hereby to erect a court of justice (*een banck Van Justitie*), formed as much as possible after the custom of this city; to which end, printed copies relative to all the law courts here, and their whole government, are transmitted. And we presume that it will be sufficient at first to choose

<sup>1</sup> Brodhead, 511.

<sup>2</sup> O'Call, 210. Brodhead, 540. <sup>2</sup> Doc. History of N. Y.

<sup>3</sup> Brodhead, 525, 532.

one schout, two burgomasters and five schepens, from all of whose judgment an appeal shall lie to the supreme council, where definite judgment shall be pronounced.”<sup>1</sup> It was evident from the order of the States General, that these officers were to be elected by the commonalty, as was customary in the cities, towns and villages of Holland; and such would seem to be the direction in the dispatch of the Amsterdam chamber. The language of the dispatch was, perhaps, a little ambiguous, and Stuyvesant, putting the construction upon it that conformed most with his own views, and which, if erroneous, he perhaps felt would not be unpalatable to his employers, resolved to appoint the new magistrates himself. He not only determined thus to keep the power



EARLIEST VIEW OF NEW AMSTERDAM.

in his own hands, but he practically defeated the provision that had been made for a city schout, by appointing to that office Cornelius Van Tienhoven, a man of depraved and dissolute life, exceedingly obnoxious to the colonists, whose only recommendation was the ability he had shown in carrying out the measures of his headstrong and arbitrary superior. By this means, the two offices of city schout and schout fiscal were united in the same person. Stuyvesant even went so far as to refuse to allow the new magistrates to appoint their own clerk, though it had been the usage in Amsterdam from the time that that city had had a burgomaster; and as a crowning act, he informed the new tribunal, that its establishment or the scope of its authority did not in the slightest degree diminish the power of himself and his council, to pass whatever laws or ordinances they pleased, for the municipal government of the city.<sup>2</sup>

<sup>1</sup> 1 N. Y. Doc. History, 387.

<sup>2</sup> N. Y. Rec. of Burgomasters and Schepens, vol. i. Brodhead, 548.

On the second of February, 1653, he issued a proclamation, appointing as burgomasters, Arent Van Hattan and Martin Krieger, and as schepens, Paulus L. Van der Grist, Maximillian Van Gheel, Allard Anthony, Peter W. Cowenhoven and William Beekman. Five days afterwards, the newly appointed magistrates assembled; Van Tienhoven, the schout fiscal, attending in his additional capacity of city schout, with Jacob Kip, who had been appointed secretary or town clerk, a station he continued to fill for many years afterwards. No business was transacted other than to give notice that the court would meet for "the hearing and determining of all disputes between parties, as far as practicable, in the building heretofore called the City Tavern, now the



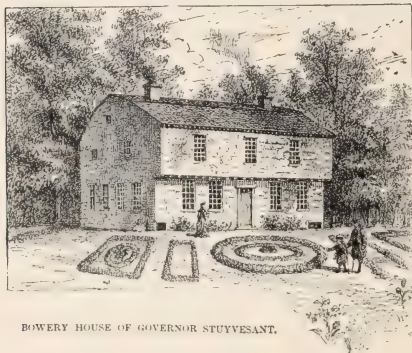
Stadt House (City Hall), on every Monday morning, at nine o'clock." The Stadt House not being ready on the day appointed, the next meeting took place four days afterwards at the Fort, where the court was duly organized for the dispatch of business, and the proceedings opened with prayer; the following eloquent extract from which will show the sense entertained by these new magistrates of the duties and obligations of the judicial office:

We beseech thee, Oh! Fountain of all good gifts, qualify us by thy grace, that we may, with fidelity and righteousness, serve in our respective offices. To this end enlighten our darkened understandings, that we may be able to distinguish the right from the wrong, the truth from falsehood, and that we may give pure and uncorrupted decisions, having an eye upon thy Word, a sure guide, giving to the simple, wisdom and knowledge. Let thy law be a lamp unto our feet and a light unto our paths, that we may never turn away from righteousness. Deeply impress on all our minds that we are accountable not to man

but to God, who seeth and heareth all things. Let all respect of persons be far removed from us, that we may award justice unto the rich and unto the poor, unto friends and enemies; to residents and to strangers, according to the law of truth, and grant that not one of us, in any instance, may swerve therefrom; and as gifts do blind the eyes of the wise and destroy the heart, keep, therefore, our hearts in judgment. Grant unto us, also, that we may not rashly prejudge any one, but that we patiently hear all parties, and give them time and opportunity for defending themselves; in all things looking up to Thee and to Thy Word for counsel and direction.<sup>1</sup>

It was the intention that the municipal government conceded to New Amsterdam should conform, as far as practicable, to that of the parent city. How essentially Stuyvesant departed from this in the outset has been already shown, and his resolving that the burgher government did not diminish the right of himself and his council to regulate municipal affairs, left the precise powers of the new tribunal very indefinite and uncertain. It led at the commencement, to an organization of the municipal government, in many respects different from that of Amsterdam, and to great unwillingness at first, on the part of the burgomasters and schepens, to interfere at all in municipal matters. In Amsterdam there were four burgomasters, each of whom attended three months of the year, in rotation, at the city hall, for the dispatch of public business, and the schepens, who were nine in number, held the

regular court of justice, having civil and criminal jurisdiction, which was almost unlimited. The duties of the schepens were especially judicial, while those of the schout and the burgomasters were chiefly executive, and the three bodies when assembled together, constituted a "college," for the enactment of municipal ordinances and laws, under the title of "the lords of the court of the city of Amsterdam."



BOWERY HOUSE OF GOVERNOR STUYVESANT.

There was also a permanent council composed of thirty-six members, the nature of which need not be explained.<sup>2</sup>

Though this division of duties and labors was highly essential in a city of the magnitude of the Dutch commercial metropolis, it was not

<sup>1</sup> N. Y. Rec. of Burg. and Schep. i. 3.

<sup>2</sup> J. Wagenaar, *Amsterdamsche Geschiedenissen*, 1740. Meyer's *Institutions Judiciaires*, tome iii. livre 5, chap.

11, 253. *Ordinances of Amsterdam*, vol. ii. p. 695. Vander Linden, 379. 2 O'Call. 210.



so necessary in a small community like that of New Amsterdam, which at the period in question, could not have embraced much over seven hundred inhabitants.<sup>1</sup> From this cause, perhaps, as well as from the uncertainty respecting the precise distribution or extent of their duties, occasioned by the notice they had received from Stuyvesant, the newly appointed officers assembled together as one body, and in that united capacity continued thereafter to discharge legislative, judicial and executive functions. In the towns and villages of Holland, the schout was the chief officer of the board. He convoked the court, and presided at the head of it, but without taking any part in its proceedings other than in collecting the votes. His position was somewhat analogous to that of the speaker or the president of a legislative assembly, except that he had no vote, though he might express his opinion, and he was obliged to quit the bench when he acted as prosecuting officer, the oldest



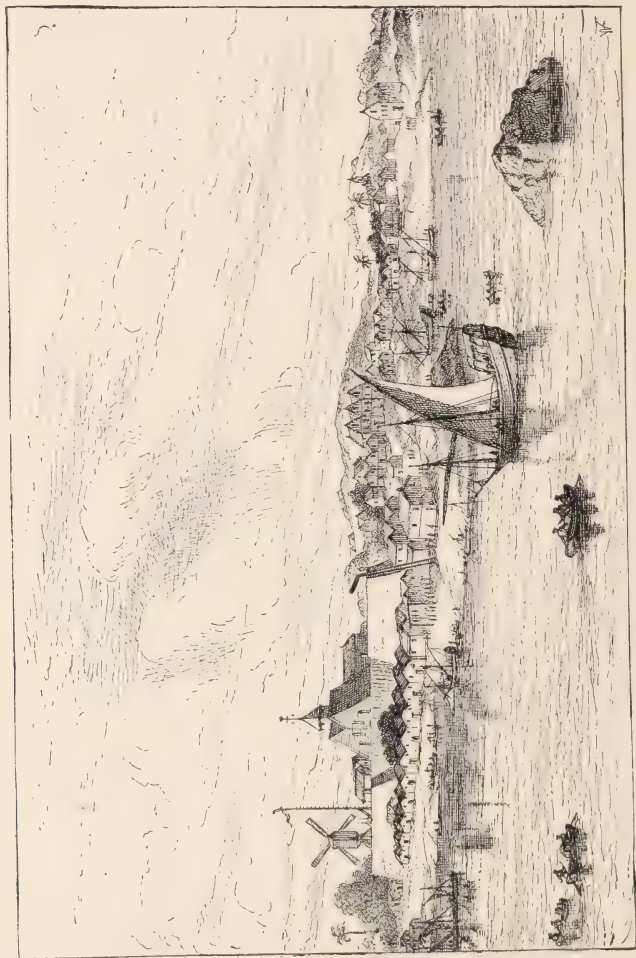
burgomaster then presiding in his stead.<sup>2</sup> In New Amsterdam, however, Arent Van Hatten, being the first named as burgomaster, assumed the presidency of the court,<sup>3</sup> and after he retired from office, the eldest burgomaster continued to act in that capacity until 1656,<sup>4</sup> when Stuyvesant ordered that the presidency should be changed every three months, which continued until 1660, in which year the colonists obtained what they had long petitioned for, a separation of the office of city schout from that of the schout fiscal. This separation had in fact been made six years before, and a city schout appointed by the Amsterdam chamber, but this officer, Jochem T. Kuyter, having been killed in a collision with the Indians, before he could enter upon the duties of his office, Stuyvesant retained the schout fiscal, Van Tienhoven, in the discharge of the duties of city schout, and persisted against the urgent

<sup>1</sup> Valentine's History of the City of New York, p. 53. Brodhead, 548.

<sup>2</sup> Van Lewen, book 1, chap. 1, sec. 21. Meyer's Institutions Judiciaires, tome iii. livre 5, chap. 11, 253. Vander Linden, 377. Brodhead, 674.

<sup>3</sup> N. Y. Rec. of Burg. and Schep. i. 4.

<sup>4</sup> N. Y. Rec. of Burg. and Schep. ii. 488.



VIEW OF NEW AMSTERDAM BY AUGUSTINE HERMANN.



remonstrance of the inhabitants in continuing him and the succeeding schout fiscal, Nicasiaus de Sille, as city schout, until the Amsterdam chamber finally appointed to the post Peter Tonneman, who had formerly been schout of a district of Dutch towns on Long Island. Tonneman received his appointment in Holland, and when he came out he insisted upon his right to the presidency of the court. In this he was supported by Stuyvesant, who went personally before the burgomasters and schepens, and insisted not only that Tonneman should sit at the head of the court, but that he should have a vote in all matters in which he was not a party, a privilege never granted to the schouts in Holland. The burgomasters and schepens resisted, but after a long and angry discussion, it was finally agreed that Tonneman should have what he claimed, until the question should be determined by the "Lords Majores," in Holland. It does not appear whether any further action was had in the matter, but the name of Tonneman was continued thereafter upon the records as the chief or presiding officer.<sup>1</sup> In 1657, that branch of municipal affairs which especially required the discharge of executive duties, had increased so largely, that the burgomasters organized a separate court, which met every Thursday to dispose of it.<sup>2</sup> In view of the serious encroachment made upon their time by the accumulation of duties, or as they expressed it, the impossibility of attending to their private affairs, the burgomasters petitioned Stuyvesant to be released thereafter from attending the burgher court, but he refused to grant it, and the court continued in the discharge of mixed legislative and judicial functions as long as the Dutch held possession of the province.

The proceedings of this tribunal, or as it was denominated, "the worshipful court of the schout, burgomaster and schepens," were all recorded by their clerk or secretary; and as everything that took place before it, the nature of the claim, or of the offence, the statements of the parties, the proof and the decision of the court, with the reasons assigned for it, were carefully noted and written down, these records supply a full account of the whole course of its proceedings, and furnish an interesting exposition of the habits and manners of the people. Upon perusing them it is impossible not to be struck with the comprehensive knowledge they display of the principles of jurisprudence, and with the directness and simplicity with which legal investigations were conducted. In fact, as a means of ascertaining truth, and of doing substantial justice, their mode of proceeding was infinitely superior to the more technical and artificial system introduced by their English successors. None of these magistrates were of the legal profession. They were all engaged in agricultural, trading or other pursuits, and yet they appear to have been well versed in the Dutch law, and to have been thoroughly acquainted with the commercial usages, customs and

<sup>1</sup> N. Y. Rec. of Burg. and Schep. v. 414, 484.

<sup>2</sup> N. Y. Rec. of Burg. and Schep. Ordinances of Burgomasters.

municipal regulations of the city of Amsterdam. This is the more remarkable, as a knowledge of the Dutch law at that period was by no means of easy acquisition. Though the principles and practice of the civil law prevailed in Holland, it was greatly modified by ancient usages; some of them of feudal origin, others the result of free institutions,



DUTCH WINDMILL.

which had existed from the earliest period; and it had engrafted upon it a number of public regulations or ordinances, emanating from the different provinces, as distinct and partly independent sovereignties, which had originated either as feudal privileges or sprung up during Spanish domination, or were the result of the long struggle and many political changes which the low countries had passed through before the general establishment of free institutions. In every town and village in Holland, moreover, there existed usages and customs peculiar to the place, which had the force of law, and were not only different in different towns, but frequently directly opposite. The

Dutch law, in fact, was then a kind of irregular mosaic, in which might be found all the principles as well as the details of a most enlightened system of jurisprudence; but in a form so confused as to make it exceedingly difficult to master it.<sup>1</sup> That these magistrates should have had any general or practical acquaintance with such a system at all, was scarcely to have been expected; but that they had is apparent, not only from the manner in which they disposed of the ordinary controversies that came before them, but in their treatment of difficult questions as to the rights of strangers, their familiarity with the complicated laws of inheritance, and the knowledge they displayed of the maritime law while sitting as a court of admiralty. The Amsterdam chamber sent out to them the necessary books to guide them as to the practices of the courts of Amsterdam, and when the province passed into the hands of the English there was attached to the court a small but very select library of legal works, mainly in the Dutch language. The authoritative work used in the administration of the criminal law was *Damhouder's Practyke in Criminele Saecken* (*Practice in Criminal Cases*). I have in my possession

<sup>1</sup> H. Fagel and J. C. Van der Hoop, *Dissert, de usu Juris Romani in Hollandia* Hag, 1779. F. Van Mieris *Groot Charterboek der Graaven Van Holland*, Leid, 1753-4. Deelen Cau en Scheltus, *Placaat Boek Van de Staaten Generaal Van Holland, en Van Zeeland*, 9

Deelen, edition of 1658. *Actes des Etats Generaux de 1600, Recueilles et mis en ordre*, par M. Gachard Bruxelles, 1849. *Oeuvres de Raepsaet*, tome iii. *Des Droit des Belgis et Gaulois*. Meyer's *Institutions Judiciaires*, tome iii, livre 5, chap. 11.

a copy of this work printed in Rotterdam, in 1628, an edition now rare in Holland. I bought it at a book auction in New York some years ago, and being found here may, from its date, have been one of the books of this library. There were, moreover, men educated to the legal profession in the colony. Van Dinelage, the vice director, who had acted as schout fiscal for Van Twiller, and chief judge of the court established by Stuyvesant, was a doctor of laws, and there is sufficient known respecting him to warrant the opinion that he was an able and accomplished jurist. Van der Donck was admitted to the same honorable degree in the University of Leyden, and was afterwards an advocate of the supreme court of Holland.<sup>2</sup> The schout fiscal, Nicasius de Sille, who acted as city schout for four years, is stated in his commission from the Amsterdam chamber to be "a man well versed in the law."<sup>3</sup> In addition to these, there were several notaries. Dirk Van Schellyne, who came out in 1641, had previously practiced at the Hague; David Provorst discharged the duties of notary for some years before Schellyne's arrival,<sup>4</sup> and there was another notary named Matthias de Vos.<sup>5</sup> Under the civil law as it prevailed in Holland, a considerable part of the proceedings in a cause, if it was seriously contested, was conducted by the notary, who was required, at least, to be well versed in the manner of carrying on legal controversies; and as he was frequently consulted by suitors for advice as to their rights and liabilities, he was generally well informed and capable of giving it.<sup>6</sup> Such was the case with Van Schellyne, who, from the records he has left, was evidently an experienced and skillful practitioner. He was not only connected with the court in the discharge of his duties as notary, but he was appointed by it, in 1665, high constable (*conchergio*).<sup>7</sup> All of these men must have had more or less to do with establishing the mode of legal proceeding, and of advising and guiding the magistrates. Van Schellyne and De Sille were in constant official communication with them. Van



STUYVESANT'S PEAR TREE.

<sup>1</sup> *Practyke in Criminele Saecken ghemaeckt door dorst De Damhouder van Brugge. Nutem Proffeytelyek, vooral le Souvereins, naillins, Borgem ro, ende Schepenen, etc. Tat Rotterdam By Jan Van Waesberghe de*

<sup>2</sup> 2 O'Call. 550.

<sup>3</sup> Brodhead, 561. 5 N. Y. Rec. of Burg. and Schep. 5.

<sup>4</sup> 3 N. Y. Rec. of Burg. and Schep. 101.

<sup>5</sup> 5 N. Y. Rec. of Burg. and Schep. 642.

<sup>6</sup> S. Van Leuwen *Practyk der Notarissen*, Rott. 1742.

<sup>7</sup> N. Y. Rec. of Burg. and Schep. ii. 642.

*Yonge Armo 1628, (Practice in Criminal Cases, by Joost de Damhouder, of Bruges. For the use of Sovereigns, Magistrates, Burgomasters and Sheriffs, etc., etc., Rotterdam, 1628).*

Dincklage must have brought into use the forms of legal procedure in the court over which he had presided, and Van der Donck was one of the chief getters up of the new tribunal; and though he survived its creation but two years, he was no doubt advised with and consulted in respect to its organization, and as to the mode in which it was conducted. We find him in fact, the very year that it was established, claiming its protection as a "citizen and burgher," against the menaces of Stuyvesant.<sup>1</sup> The court was required in all its determinations, to regard as paramount law, all regulations established by or instructions received from the chamber of Amsterdam or the College of Nineteen, for the government of the colony. Next, all edicts or ordinances duly established by the governor and council; then the usages, customs or laws prevailing in the

city of Amsterdam, and where they furnished no guide, the law of the fatherland, by which was more particularly understood the ordinances of the province of Holland and of the states general, and the civil law as it prevailed in the Netherlands, or, as it is denominated by jurists, the Roman Dutch Law.



CORNER OF BROAD STREET AND EXCHANGE PLACE.

The burgomaster and schepens had constantly

demanded from Stuyvesant that they should be allowed to nominate a double number of persons, from whom their successors should be chosen, as a partial approximation to the privileges enjoyed in the Netherlands, or as they expressed it, "in the beloved city of Amsterdam;"<sup>2</sup> but he continued the old magistrates, merely supplying vacancies, until 1656, when he consented, with the proviso that the old magistrates should always be considered as re-nominated—which left it in his power to continue them precisely as he had done before. The condition was accepted, and the nominations made; but Stuyvesant, being displeased with some of the new names, continued the old magistrates, merely supplying vacancies, until the time for reappointment came around, in 1658, when he at last gave way, and selected, from a double list of names presented to him, the magistrates who were to serve. The burgomaster and schepens then selected, continued in office until 1660, when a new nomination and appointment was made every year, in the month of February,<sup>3</sup> which was continued thereafter, until the

<sup>1</sup> N. Y. Rec. of Burg. and Schep. i. 321.

<sup>2</sup> New Amsterdam Rec. 359, 373, 375.

<sup>3</sup> Rec. of N. Y. Burgomasters and Schepens, iv. 299.



English changed the organization of the court. All these magistrates, as far as can be gathered, were men of intelligence, of independence, and with one or two exceptions, of high moral character, evincing in the discharge of their duties, and especially in those of a judicial nature, that unswerving adhesion to established rules and customs, that sterling good sense and strong love of justice, which constitutes so marked a feature in the Dutch national character.

The right which Stuyvesant claimed, of interfering in the administration of city matters, appears to have been confined to what related to the general regulation of the city's affairs, and not to the administration of justice between particular individuals, or as against public offenders. Upon the former matter, he and the burgomaster and schepens came frequently in collision; and he sometimes gave vent to his anger at their insolence and presumption, by a public proclamation, in which they were contemptuously referred to as "the little bench of justice;" but he seems to have abstained from any interference with their judicial powers. At first he was disposed to limit their action in criminal cases; but



GOVERNOR'S HOUSE AND THE CHURCH, 1642.

finally he suffered them to exercise unlimited criminal and civil jurisdiction, except the infliction of punishment in capital cases. The mode of proceeding in civil cases was simple and summary. The court was held once every fortnight, though frequently once every week, upon a stated day. Attached to the court was an officer known as the court messenger, who, at the verbal request of the party aggrieved, summoned the adverse party to appear at the next court day. If the defendant failed to appear, he incurred the cost of the summons, lost the right to make any objection to the jurisdiction of the court, and a new citation was issued. If he failed again, he incurred additional costs, lost the right to make all "dilatory exceptions," or to adjourn, or delay the proceeding. He was then cited for the third time, and if he did not then appear, the court proceeded to hear the case and give judgment, and he was cut off from all right of appeal or review. But if, upon hearing the plaintiff's case, the court deemed the presence of the defendant essential, they might issue a fourth citation, in the nature of an arrest, and compel his appearance. Parties, however, usually attended upon the first citation. The plaintiff stated his case, and the defendant made his answer. If they differed in a fact which the court thought material, either party might be put to an oath; and, if they

<sup>1</sup> Documents of Stuyvesant's Council in N. Y. Record of Burgomasters and Schepens, 26th of February, 1651.

were still in conflict, the court might require the examination of witnesses, and the matter was adjourned until the next court day, during which time either party might take the depositions of his witnesses, before a notary, or the court might require that the witnesses should be produced, to be examined orally before it, at the adjourned day, under oath. But most generally, the matter was disposed of upon the first hearing of the parties, without resorting to the oath, or the examination of witnesses. If it was intricate, or it was difficult to get at the truth, it was the constant practice to refer the cause to arbitrators, who were always instructed to bring about a reconciliation between the parties, if they could; and this was not confined merely to cases of disputes about accounts, or to differences growing out of contracts, but it extended to nearly every kind of case that came before the court. The arbitrators were left to the choice of the litigants, or appointed by the court, or one of the

to take the matter in concile the contes- ciliation could be ef- would not submit to or conclusion of the satisfied party might before the court, where of. These references every court day. In ness of this tribunal court of conciliation;



SEAL OF NEW NETHERLAND.

schepens was directed hand, and try and re- tants. If no recon- fected, or the parties the final determination arbitrators, the dis- again bring the matter it was finally disposed were frequent upon fact, the chief busi- was, in acting as a and it is worthy of

remark, that though the amount involved was frequently considerable, or the matter in dispute highly important, that appeals to the court from the decision of the arbitrators were exceedingly rare. Indeed, the first appeal to be found upon the records was brought by a stranger.<sup>1</sup>

There was a more formal mode of proceeding, if parties preferred it. After the plaintiff had stated his case, the defendant might require him to put it in writing, and a day was given to that purpose. The defendant was then obliged to answer in writing, to which the plaintiff could reply, and the defendant rejoin, and there ended the pleadings. Each party then went before the notary of his choice, and had the depositions of his witnesses reduced to writing, a draft or copy of which was retained by the notary, in a book kept by him for the purpose; and where it was necessary, a commission, or, as it was called, a *requisitory letter*, might be obtained for the examination upon interrogation of witnesses residing beyond the court's jurisdiction, who were examined before the judges of the local court where the witness resided, who sealed up the examination, and transmitted it to the court having jurisdiction of the cause. When the proofs were complete, they were added to the pleadings, the whole constituting what was called the memorial,

<sup>1</sup> N. Y. Rec. of Burgomasters and Schepens, i. 188, 231; ii. 104, 176; iii. 188; v. 190; vi. 474; vii. 180.



which was submitted to the court, either party being at liberty to inspect it, and having the right, within a certain time, to have any of the witnesses of his adversary examined upon cross interrogatories, in respect to anything contained in their deposition, which was deemed material, or to have additional witnesses examined on his own behalf in reply; the manner of conducting which subsequent examination was arranged by the judge. But this mode of proceeding being dilatory and expensive, was rarely resorted to. The great majority of cases were referred to arbitration, or disposed of upon a summary hearing of the parties before the magistrates; and it may be important to note, in respect to the rules of evidence, that whenever a paper or document was produced, purporting or avowed to be in the handwriting of a party, it was assumed to be his handwriting, unless he denied the fact under oath; and that merchants or traders might always exhibit their books in evidence, where it was acknowledged or proved that there had been a dealing be-

tween the parties, or been delivered, pro-  
larly kept with the  
persons, things, year,  
practice which, in the  
and New York, sur-  
bunals, and has, at the  
tain qualifications or  
to nearly every state  
credit was given to all  
where they were  
or confirmed by the



SEAL OF NEW AMSTERDAM, 1654.

and also to memorandums made between parties by sworn brokers. A leading distinction in evidence was also made between what was termed *full proof*, as where a fact was declared by two credible witnesses, as of their own knowledge, or it was proved by a document or written paper, and *half proof* as where it rested upon the positive declaration of knowledge by one witness only, under which latter head, as weak but assisting evidence, hearsay was allowed, which, in some instances, as in the case of certain dying declarations, was admitted to the force of full proof; and as the determining of a case upon the evidence of witnesses was left to the judges, very discriminating and nice distinctions were made in adjusting or weighing its relative force or value.'

When judgment was rendered against a defendant for a sum of money, time was given for payment, usually fourteen days, for the discharge of one half, and the remainder in a month. If, at the expiration of that time, he did not comply, application was made to the court, and the schout, or usually the court messenger, went to the delinquent, and exhibiting a copy of the sentence and his wand of office, which was a

<sup>1</sup> Rec. of N. Y. Burg. and Schep. vii, viii. Meyers' Institutions Judiciaries, chap. 14, 387. Van Leuwen, book v. chap. xlii. to xx. and xxiii.

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bunch of thorns, summoned him to make satisfaction in twenty four hours. If, at the expiration of that time, the amount was not paid, the delinquent was again summoned to pay within twenty-four hours, which involved additional expense; and if, when that time expired, he was still in default, the messenger, in the presence of a schepen, took into custody the debtor's movable goods, which he detained for six days, within which time they might be redeemed on payment of the expenses. If they were not redeemed, notice was then given by publicly announcing upon a Sunday, and upon a law day, that they would be sold, and at the next law or market day they were disposed of by auction. If it was necessary to levy upon or sell real estate, or what in the civil law is termed immovable property, a longer term was allowed, and greater formalities were required. The manner of selling it was peculiar. The officer lighted a candle, and the bidding went on while it was burning, and he who had offered the most at the extinction of the candle, was declared the purchaser, which differed from the ordinary mode in a Dutch auction, where a public offer of the property is made at a price beyond its real value, which is gradually lowered or diminished until one of the company agrees to take it.<sup>1</sup>

The civil business of the court was large and varied; such as actions for the recovery of debts, which were generally cases of disputed accounts, or of misunderstanding between the parties, for in proof the probity and punctuality of the Dutch suits by creditors to enforce payments from delinquent debtors, formed but a small proportion in the general mass of this business. There were proceedings by attachments against the property of absconding debtors, or of non residents or foreigners, on which security was required of the debtor intending to depart, to release the property from the attachment; actions to recover the possession of land, or to settle boundaries, a proceeding somewhat similar to the relief afforded by our courts of equity upon a confusion of boundaries; actions to recover damages for injuries to land or to personal property, or to recover specific personal property as in replevin, or its value as in trover.

Actions for freight, for seamen's wages, for rent, for breach of promise of marriage, where the performance of the contract was enforced by imprisonment; for separation between man and wife, in which case the children were equally allotted to the parties, and the property divided,<sup>2</sup> after the payment of debts; proceedings in bastardy cases, in which the male was required to give security for the support of the child, and in which both delinquents might be punished by fine or imprisonment. Actions for assault and battery, and for defamation, which were *quasi* criminal proceedings, punishable by fine, imprisonment or both, though the defamer was generally discharged upon making a solemn public recantation before the court, sometimes upon his knees, asking pardon

<sup>1</sup> Rec. of N. Y. Burg. and Schep. i 204, 250; v. 207, 576. Van Leuwen, book 5, chap. 25.

<sup>2</sup> Rec. of N. Y. Burg. and Schep. iv. 1659. Rec. of Mayor's Court, i. 533.

of God and of the injured party. Pecuniary compensation, for injuries to person or character, could not be enforced; though cases occurred in which the defendant was discharged, it appearing that he had made compensation to the other party in money or goods. And, from the frequent application made to the court for redress in cases of defamation, detraction would seem to have been a vice to which the inhabitants were particularly prone.

The court, also, acted as a court of admiralty, and as a court of probate, in taking proofs of last wills and testaments, and in appointing curators to take charge of the estates of widows and orphans. Application was made to Stuyvesant for liberty to establish an orphan house, similar to the celebrated institutions which exist throughout Holland. He did not think that such an establishment was necessary, but he afterwards assented to the appointment of orphan masters, and those officers acted in aid of the court. Some of its proceedings in the exercise of



WATER GATE, FOOT OF WALL STREET.

this branch of its jurisdiction, will serve to illustrate how tenaciously the Dutch clung to old forms or legal ceremonies, as, where a widow, to relieve herself from certain obligations, desired to renounce her husband's estate; it is, in all such cases, recorded, that the intestate's estate "has been kicked away by his wife with the foot," and that she has duly "laid the key on the coffin."<sup>1</sup> The court also exercised a peculiar jurisdiction, that of summoning parents or guardians before them, who, without sufficient cause, withheld their assent to the marriage of their children or wards, and of compelling them to give it.<sup>2</sup> It also granted passports to strangers, or conferred on them the burgher right, a distinction, which now, that it has ceased to be attended with any practical advantage, is still kept up in the custom of tendering or presenting the freedom of the city to strangers as a mark of respect. It may not be uninteresting, moreover, to state, that the origin of a fee bill, for regulating by a fixed and positive provision of law, the costs of attorneys and other public officers, is to be traced to Stuyvesant. On the 25th of January, 1658, he put forth what is known in Holland as a placard, that is, a proclamation, or ordinance, emanating from some legislative or executive authority, having the force of law, by which he established a regular tariff of fees. In England, the fees of attorneys and other officers of the court has generally been regulated by the court,

<sup>1</sup> Rec. of N. Y. Burg. and Schep. ii., 32.

<sup>2</sup> Rec. of N. Y. Burg. and Schep. vols. 1, 2, 3, 4, 5, 6.



and not by any public act. In New York, however, the fees of public officers has been a matter of public regulation from a very early period. Ten or twelve years after the restoration of the province to the English, they were regulated by an ordinance of the governor, and afterwards by acts of the general assembly; and there is every reason to believe that the practice, especially as respects the fees of attorneys and officers of the court, was derived from the Dutch.<sup>1</sup> A copy of Stuyvesant's ordinance remains in the records of the burgomaster and schepens, and as the preamble to the document is of interest as a legal curiosity, we shall take the liberty to insert it. "Whereas, the director general and council of New Netherland, have sufficient evidence from their own experience, in certain bills of costs which have been exhibited to them, as well as by the remonstrances and complaints which have been presented to them by others, of the exactions of scriveners, notaries, clerks, and other licensed persons, in demanding and collecting



THE CANAL IN BROAD STREET.

from contending persons, excessively large fees, and money, for writing for almost all sorts of instruments, to the manifest, yea, insufferable expense of judgments and judicial costs; some of whom are led by their covetousness and avarice so far, as to be ashamed to make a bill or specify the fees they demand, but ask or extort a sum in gross. Therefore, to provide for the better and more easy administration of justice, the director general and council do enact," &c.; after which follows provisions requiring the licensing of the officer entitled to take the fees, the keeping of a record of all fees charged by them, and prohibiting champetry and other abuses. It is then provided, that the officers enumerated shall serve the poor gratis, for God's sake, but may take from the wealthy the fees specified. Each particular service is then

<sup>1</sup> Ordinance and Table of Fees in first edition of the Colonial Laws, by Bradford. 1694; Charter Book and Acts of Assembly of 1683, in office of Secretary of State; Laws of 1709, ordinance regulating fees.

enumerated in the manner of our former fee bills, with the number of stivers allowed for each. Among the provisions is the following entry : "No drinking, treats, presents, gifts or doucers shall be inserted in any bill, or demanded;" and the ordinance concludes by directing, that it shall be read once every year in the court, upon a day specified, to the officers enumerated, who were thereupon to be sworn faithfully to observe it; any officer being subject, for a violation of its provisions, to a fine of fifty guilders, or the loss of his office.<sup>1</sup>

In criminal cases, the schout prosecuted as plaintiff on behalf of the community. At his requisition, and upon the inspection by a magis-



THE NEW YORK SLAVE MARKET.

trate of evidence sufficient to warrant a belief that an offence had been committed, the offender might be arrested or summoned according to the discretion of the magistrate; though where the culprit was detected in the actual perpetration of the deed, or where, in the judgment of the schout, there was strong

ground of suspicion against him, and, in his opinion the public interest demanded it, he might direct his immediate arrest; but in all such cases the schout was obliged to give notice of the arrest to the magistrate within twenty-four hours, who was thereupon bound to investigate the matter—a provision that practically dispensed with the necessity of the writ of habeas corpus, so familiar in the history of the English law.<sup>2</sup> Bail was allowed, except in cases of murder, rape, arson or treason. There were two modes of trying the prisoner; either publicly upon general evidence, which was the ordinary mode, or by examining him secretly in the presence of two schepens, in which written interrogatories were propounded to the prisoner, to which he was obliged to return categorical answers. The Dutch law then adhering to the general policy of the civil law in respect to extorting confessions from offenders, and making use of the torture and of all those inquisitorial aids and appliances which have cast such a blemish upon the criminal jurisprudence of Europe.<sup>3</sup> The torture, however, was not used, except where the presumptive proof amounted almost to a certainty; and I have found but one case upon the records in which this cruel and unnecessary test was resorted to. Criminal prosecutions were not frequent, nor were the offenses generally of a grave character. The punishments were by fines, which were distributed in three equal parts, to the schout, to the court, and to the poor; by imprisonment, whipping, the pillory, banishment from the city or province, or death,

<sup>1</sup> Placards of Stuyvesant, in Rec. of N. Y. Burg. and Schep.

<sup>2</sup> Ordinance of Amsterdam, p. 46, and seq. Ed. of 1644.

<sup>3</sup> La Pratique et eucheridon des causes Criminills, Louvain, 1555. Van Leuwen, book 5, chaps. 27, 28.



which, however, could not be inflicted without the concurrence of the governor and his council.<sup>1</sup>

Courts of the same popular character were established upon Long Island, shortly after the erection of the one at New Amsterdam. A court with two *schepens* existed at Breuklin (*Brooklyn*) before 1654, which in that year was increased to four *schepens*. There was one at Midwout (Flatbush) with three *schepens*, and another at Amersfoort (Flatlands). David Provoost, who had been a notary at New Amsterdam, was made *schout* of Breuklin, and a district court was established, composed of the *schout* of Breuklin, and of delegates from these three tribunals, which was continued until 1661. In that year, similar courts were established at Boswyck (Bushwick) and at New Utrecht, and the



STUYVESANT'S HOME, "THE WHITEHALL," 1653.

whole were formed into a district known as "the five Dutch towns," to which there was attached one *schout*, residing at Breuklin, each town having its separate courts.<sup>2</sup> Courts were also established by virtue of a grant from Stuyvesant, among the English settlers at Canorasset (Jamaica) in 1656,<sup>3</sup> and at Middleburgh (Newtown) in 1659.<sup>4</sup> In 1652 Stuyvesant, by the simple exercise of his prerogative, established a court at Beverwyck (Albany) independent of the patroon's court of Raensellervyck.<sup>5</sup> It was held at the house of the vice director, upon the second floor, in a room directly under the roof, without a chimney, and to which access was had by a straight ladder, through a trap door.<sup>7</sup> The courts thus enumerated, including the patroon courts, already re-

<sup>1</sup> Rec. of N. Y. Burg. and Schep. iv. 141.

<sup>2</sup> 2 Thompson's History of Long Island, 96. 2 O'Call. 313, 323.

<sup>3</sup> Brodhead, 580.

<sup>4</sup> Thompson's History of Long Island, 96.

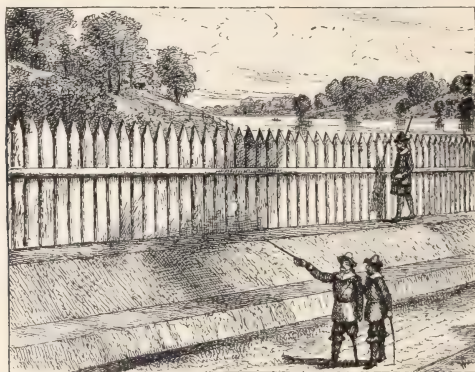
<sup>5</sup> Riker's Annals of Newtown.

<sup>6</sup> Albany Rec. 183. Records of Mortgages, Albany, book A. 2 O'Call. 183.

<sup>7</sup> 2 O'Call. 311.

ferred to, and the supreme or appellate court at New Amsterdam, composed of the governor and council, constituted the judicial tribunals of New Netherland, until the colony passed into the hands of the English.

That event took place on the 6th of September, 1664.<sup>1</sup> By the terms of capitulation entered into between Col. Richard Nicolls and Stuyvesant, it was agreed that such of the inhabitants as desired might return to Holland, and that those who remained should continue to enjoy their own customs concerning their inheritances; that public records, except such as concerned the States General, should be carefully kept; that all contracts made before the signing of the articles should be determined according to the manner of the Dutch; that no judgment that had passed any judicature in the colony should thereafter be called in question, and that all inferior civil officers and magistrates should continue as they were until the customary time of new elections, when they



PALISADES ALONG WALL STREET.

should then have the choice of their successors, the new magistrates so chosen taking the oath of allegiance to the king of Great Britain.<sup>2</sup> Immediately upon assuming the government, as the representative of James, Duke of York, to whom the territory had been ceded by virtue of a grant or patent from Charles II., Nicolls changed its name, as well as that of the city, to New York, but abstained from any interference with the municipal government of the city, or with the administration of justice, until a later period.

He carried out the terms of capitulation that had been agreed upon, and adapted his measures so judiciously, that the municipal government of the burgomasters and schepens was resumed within a week,

<sup>1</sup> Brodhead, 762.

<sup>2</sup> 2 Rev. Laws, Appendix, No. 1.

and the administration of justice was proceeded with as before. Upon resuming their duties, the burgomasters and schepens addressed a long letter to the directors of the West India Company, announcing the capitulation, and setting forth the reasons why they had deemed it best to continue under the rule of their conquerors. It was an affectionate and earnest epistle, addressed to the directors by "their honors' loyal, sorrowful and desolate subjects," concluding in these words: "Meanwhile, since we have no longer to depend upon your honors' power and protection, we, with all the poor sorrowing and abandoned commonalty here, must fly for refuge to the Almighty God, not doubting but that He will stand by us in this sorely afflicting conjunction. We remain your sorrowful and abandoned subjects. Done at Jorck, (York) heretofore



THE FIRST WAREHOUSE.

named Amsterdam, in New Netherland, 16th of Sept., 1664."<sup>1</sup> When the time arrived, in the February following, for choosing new magistrates, great reluctance was shown to take the oath of allegiance. Peter Tonneman, the schout, positively refused, and departed for Holland. Allard Anthony was chosen in his place, and he, with the other new magistrates, took the oath, though but one hundred and fifty of the inhabitants could be prevailed upon to do so.

New York remained in the possession of the English for nine years, or until the 9th of August, 1673, when it was retaken by the Dutch. The Dutch occupation, however, was not of long continuance. By a treaty signed at London, the States General relinquished the possession of it to the English. On the 31st of October, 1674, it was formally surrendered by the Dutch governor to Sir Edmund Andrys as the representative of James II., and it remained a British province until the American Revolution.

<sup>1</sup> 5 Rec. of N. Y. Burg. and Schepens.

**TROUW-BOECK**  
*Oft Register der*  
**PERSONEN.**

*Die Hier ingeschröven, en*

*Hier, oft buyten des*

**Stadt New-Yorke**

*Getrouwt zyn .*

*Van den 11 Dec. 1639. totten 15 May 1662.*

**A<sup>o</sup> 1639.**

*don 11 decemb.*

*Egbert van Borsum, fm. van Embden, on*  
*annatje Goudrick, f. d. van amsterdam .*

*don 10 dicto.*

*Bergor Jacobson, fm. van Gorborg, in Silofien on*  
*Engeltje Maub, f. d. van Compt, in Sweden*

**A<sup>o</sup> 1640.**

*don 11 febr.*

*Egouid Nysson, fm. van Bunnick, fm t Sticht van Uytz, on*  
*PgaBoa fahij, f. d. van Jacobsen, in Engelt.*

*don 26 Aug.*

*Paulus Jansen, van Vlispingen, wdt van Noeltje Coen . on*  
*Tryntje Goroub, f. d. van Jonopooron .*

*don 16 Sept.*

*Egomab Sander, fm. van amsterdam, on*  
*Sara van Gorchum .*

*don 4 novemb.*

*Koblandt Gachwaik, fm. van Brandtfort in Segetlant, on*  
*Jaunoken Jauk, f. d. van amstord.*

*don 10 dicto*

*Micriel paulus, fm. van dormoudt in Vlaenderen, on*  
*maria Kypaels f. d. van A. N. dalt.*

*Verd,*

## ENGLISH COLONIAL POLITY AND JUDICIAL ADMINISTRATION, 1664-1776.



THE first constitution of New York, as an English province, consisted of (1) the patent of Charles II. to his brother the Duke of York, dated March 12/22, 1664 (that is, three months before the expedition for the subjugation of New Netherland set sail); (2) the Duke's commission to Colonel Richard Nicolls, as his deputy governor; (3) Colonel Nicolls's proclamation to the inhabitants of Long Island, from New Utrecht Bay, dated August 18/28, 1664; and (4) the articles of surrender exchanged eleven days thereafter. The *habendum* clause of the patent is the same as in all the colonial patents. The English plantations in America and



SEAL OF THE DUKE OF YORK.

elsewhere (including the Channel Islands and Ireland, as a conquest), belonged to the king's private domain or demesne. He chose to consider all his American possessions as attached to his own Royal Manor of East Greenwich, in the county of Kent. Over these outlying acres of American soil he exercised entire control, like any other lord of a manor, and hence could, at his pleasure, devise them by will, or grant them by deed.<sup>1</sup> The rule of their government was



DUTCH COURTSHIP.

<sup>1</sup> The right to alienate crown lands by grant at pleasure was taken away by I Anne, c. 8, passed in consequence of the improvident alienations of land in Ireland by William III.



the royal prerogative, except as it was expressly limited or excluded by the terms of his grant. The parliament had no constitutional right to interfere; it was the king who as lord paramount, gave political being to the colony, and bestowed such rights, or imposed such burdens upon its inhabitants, as suited him. On any question subsequently arising the patent or charter was the touchstone for its determination, and popular discussion of its true interpretation became, therefore, a habit of the people. Americans have never, from the first, lived under any but written constitutions.

1. By his patent to the Duke of York, for the expressed consideration of 40 beaver skins a year, the king surrendered to the patentee all his royal prerogatives, including the making of laws, which "be not contrary to, but, as near as conveniently may be, agreeable to the laws, statute and government of this our realm of England." The only thing reserved was the feudal supremacy of the crown, and "the receiving, hearing and determining of the appeal and appeals of all or any person or persons of, in or belonging to the territories or islands aforesaid, in or touching any judgment or sentence to be there made or given." With this mild reservation, there was given to "our dearest brother James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full, absolute power and authority to correct, punish, pardon, govern and rule" the inhabitants, "according to such laws, orders, ordinances,



CITY HALL AND "GREAT DOCK," 1679.



directions and instruments as by him or them shall be established; and in defect thereof, according to the good discretion of his deputys, commissioners, officers and assigns respectively; as well in causes and matters capital and criminal, as civil, both marine and others." Power was also given "to ordain and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government," also "to use and exercise martial law in cases of rebellion, insurrection and mutiny."

The only other individual proprietary of an American province, at that time, was Lord Baltimore, whose patent of Maryland, granted by Charles I (June 20, 1632), was quite as liberal in its grant of powers, but in the matter of legislation, laws were to be made only with the assent of the freemen of the province, except in cases of emergency, and, then, only ordinances not impairing life, limb or property.

2. The Duke's commission to Richard Nicolls, Esquire, whom he appointed his deputy governor "to perform and execute all and every the powers" granted by the patent was, in effect, a declaration that legislation for the province was to be by ordinance, and not by statute. But the proclamation which the Royal Commissioners (Nicolls, Cartright and Carr) issued and distributed from New Utrecht Bay, on the arrival of the fleet, always regarded by the then inhabitants as a constitutional guaranty, had promised all those submitting to his Majesty's government the protection of his laws and justice, "and all other privileges with his Majesty's English subjects." As it was the privilege—a palpable fiction, nevertheless—of all Englishmen everywhere, to participate in the making of their own laws, notoriously enjoyed by the contemporary colonists of New England, Maryland and Virginia—the subsequent flagrant violation of this promise, by the Duke for 20 years after the occupation, never ceased to be ground of more or less bitter complaint by the English settlers of Long Island who largely outnumbered the Dutch, and to whom the proclamation had been particularly addressed.<sup>1</sup>

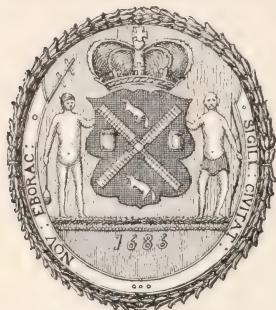


EARLY COMMERCE ON THE HUDSON.

<sup>1</sup> The Duke's patent is said to have been drafted under the direction of Lord Chancellor Clarendon, the Duke's father-in-law, who had already bought out the interest of Lord Sterling, under whose previous grant the greater portion of Long Island had been settled by English subjects.

<sup>2</sup> In October, 1669, the English towns of Hempstead, Jamaica, Oyster Bay, Flushing, Newton, Gravesend, West Chester and East Chester, petitioning for redress, laid stress on the exclusion of the people from any share in legislation, the right to which had been promised them by the proclamation.

3. To the non-English inhabitants, however, the constitutional guaranty of chief importance was the stipulation of the articles of capitulation (among others) that "the Dutch here shall enjoy their own



SEAL OF NEW YORK, 1686.

customs concerning their inheritances; that no judgment that has passed any judicature here shall be called in question; that all inferior civil officers and magistrates shall continue as now they are (if they please) until the customary time of new elections, and then new ones to be chosen by themselves, provided such new chosen magistrates shall take the oath of allegiance; and that all differences of contracts and bargains made before this day, by any in this country shall be determined according to the manner of the Dutch." There is no reason to believe that these guarantees were ever deliberately repudiated by the

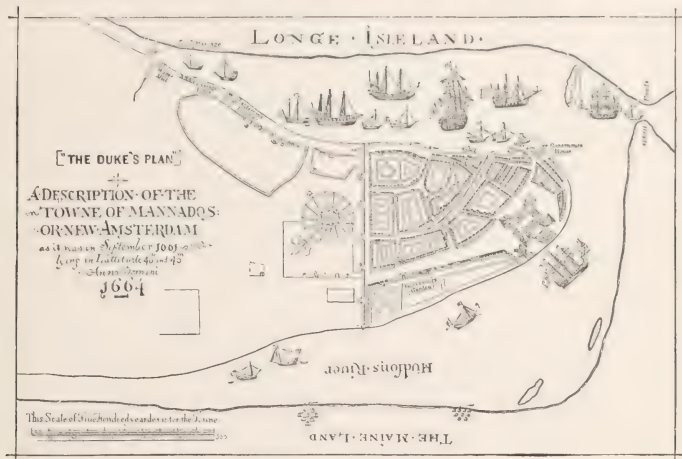
Duke's government; on the contrary, the Dutch law continued to be administered by Dutch methods, and in the Dutch language, in certain of the purely Dutch towns like Albany and Esopus, until the re-occupation of the province by the English in November, 1674, after its re-conquest, and its occupation by the Dutch since August, 1673. Holland's final cession of the province by the treaty of Westminster (Feb. 9/19, 1674), inasmuch as it contained no express reservation in favor of the guarantees of 1664, was considered to have annulled them; at least it was so considered by the English part of the inhabitants, and the provincial government as well; but never by the Dutch of that, or of any subsequent, generation. To the last, they claimed the right of free trade with Holland, under the article of the surrender, "that Dutch vessels may freely come hither, and any of the Dutch may freely return home, or send any sort of merchandise home in vessels of their own country."<sup>1</sup>

<sup>1</sup> So late as 1759, Lieut. Gov. Cadwallader Colden wrote: "The Dutch of this province, it is probable, think the articles of surrender are still in force and that any breach of them is a piece of injustice to them, and therefore, among other things, they may in their own minds justify themselves in carrying on the illicit trade with Holland, in opposition to the (British) Laws of Trade, which has been carried on from New York for many years." He then argues against any such assumption (*N. Y. Hist. So. Pub.* (1868), 168). This was a fruitful subject for hot debate in the province for many years. On November 9th, 1674, the Duke's deputy governor confirmed, by proclamation, "all former grants, privileges and all estates legally possessed by any under the Duke of York, before the late (Dutch) government," which the Dutch claimed was only in accordance with the law of *post-liminy*, under which the intervening conquest operated merely to suspend,

not to extinguish their rights. *Per contra*, it was argued that there had been no conquest; that the Dutch ships had no thought of attempting the conquest of New York, when in August, 1673, they came in under Staten Island; but only to take in wood and water, knowing that there was not sufficient force there to hinder them, but that the Dutch inhabitants treasonably told the Dutch commodore of the absence of the Governor and a greater part of the garrison up the river, and of the defenceless condition of the city, and invited him to consent to take it, which he did without firing a gun; that having voluntarily and without force renounced their allegiance to the English crown and submitted anew to Holland's, "they forfeited without doubt, all privileges that they could claim by the articles of surrender." (Colden, *Ibid.*, 184). Smith, (*History of N. Y.*, ed., 1814, p. 61, n.) says: "In New York, the right of *post-liminy* was disregarded and perhaps unknown."

## THE JUDICIAL STATUS OF NEW YORK.

But the judicial status of New York, while under the British crown, is not determined by the terms of the Dutch surrender, nor by the fact of its territory being ceded by the Dutch government to the English king by the two successive treaties of Breda (July 21 34, 1667) and Westminster (Feb. 9 19, 1674). The question of such status, under the rules of international law, involves a larger survey of the field than this; and although, after vexing our courts for several generations, it has probably been now laid to rest as having no determining value in the discussion of legal rights; yet, as it must always arise in any attempt,



PLAN OF NEW AMSTERDAM IN 1661.

however slight, to trace the history of our jurisprudence, a brief statement of the matter is pertinent.

To know what the original common law of New York was, and to trace its development to the present time, one must learn what changes have taken place in its sovereignty; so that, from a lawyer's point of view, it may become important to know whether, at a particular period, the seat of the sovereignty of New York was in London, or at the Hague; for, by an ancient fiction of law, the sovereign is regarded as the sole owner and lord paramount of all the land of his kingdom and its dependencies, individual holders taking title from him, though no grant of his is provable by any record or otherwise; and by another conceit of jurists, he is the fountain of justice and the author, mediately or immediately, of the law of the land, so that no law or ordinance, *as law*, can obtain in any part of his dominions without his consent, express

or implied. The ultimate sovereignty of this territory had been claimed by Great Britain, France, and by the United Provinces of the Netherlands. The French king founded his title to northern New York on the fact that his subjects had, first of Europeans, ascended the St. Lawrence and its tributaries, including Lake Champlain, and had explored and occupied their shores. In like manner, the Netherlands claimed all the country lying between the Connecticut and Delaware Rivers, and the lands drained by them, upon the alleged fact of their having been the first of Europeans to ascend these rivers, and others intermediate from the sea, and to explore and settle their shores. On the other hand, the English king's title was based on the ultimate fact of

Cabot's discovery of 1497, under the commission of Henry VII., followed, in occupation at different points on the coast by English crown grants, prior to any occupation of New England by the Dutch, who were regarded as mere passers and squatters between whom they tested to the gov-



GREAT SEAL OF 1691.

Hague against this unwarranted invasion of English territory from time to time, both under the monarchy and the commonwealth, ever since the year 1614, but for one reason or another, easily comprehended when the domestic history of England for the first half of that century is considered, had not found it convenient or politic to vindicate the British title until 1664, shortly after the restoration of the monarchy.

According to a contemporary historian, "there is nothing more perplexing than the delicate relations, in history, of cause and effect, whether in the event, or in the recorders of them. There seems to be nothing to check dependent progress, if we travel back over the annals of the world. Who would have thought that when Henry VII. of England gave to the Venetian, John Cabot, and his three sons, the right to discover western lands, he would have determined the fact of the fee of the road-way of the New York Bowery, as really happened the other day?" Such is not quite the fact; but the records of our courts, both of the province and of the state, abound with cases calling for the judicial determination of property rights of great value, not only in highways, in rivers and streams, but inheritances, which were supposed to depend upon whether the Dutch government was ever vested with the territorial sovereignty of this state, as against England, and, therefore,

<sup>1</sup> Justin Winsor, "The Perils of Historical Narrative," the *Atlantic Monthly*, September, 1890.

THE  
**LAWS & ACTS**  
 OF THE  
**General Assembly**  
 FOR  
 Their Majesties Province  
 OF  
**NEW-YORK,**

As they were Enacted in divers Sessions, the first of  
 which began *April*, the 9th, *Annoq; Domini*,  
 1691.

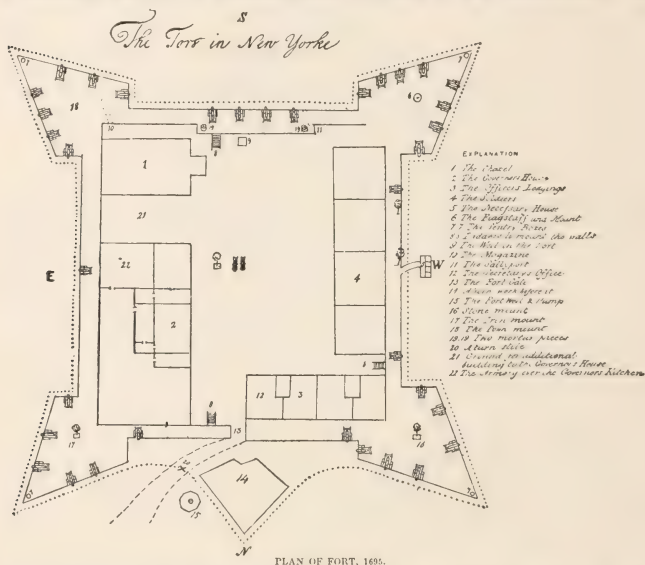


At *New-York*,

Printed and Sold by *William Bradford*, Printer to their Majesties, King  
*William & Queen Mary*, 1694



whether the laws and ordinances of that government, promulgated here during its forty years of occupation, ever had any force and validity *as law*, and so, surviving the English occupation of 1664, still control the use and enjoyment of those rights. In examining these records, one knows **not** which to admire most, the persistent efforts of successive generations of lawyers to convince the court that the matter at bar was governed by the Dutch and not the English law, or *vice versa*, because the one or the other was the law of the sovereign of the land when the particular right arose—or the ingenuity of the judges, who, generally speaking, have succeeded in dodging the question by finding some less interesting and quite common-place solution of the controversy. At



bottom, these forensic contests are attempts to establish what was the original common law of New York ;—was it the common law, and applicable statutes, of England, existing in England at the time of the occupation in 1664, or was it something more or different ? If the reduction of the Dutch was a *conquest*, and England took “title by conquest,” as understood by the law of nations, which is a part of Anglo-American common law, the change of sovereigns from Dutch to English did not, *ipso facto*, change the system of law theretofore established, or affect existing property rights or incidents of tenure, but the same remained after the conquest, and inured to the benefit of every successor in

interest of the original Dutch grantee, unless expressly abrogated by the conqueror. On the other hand, if the English military expedition, which compelled the surrender of the Dutch province and the submission of its inhabitants to the sovereignty of Great Britain, did not effect "a conquest," but, at most, a forcible entry upon her own territory, in vindication of her own anterior title and sovereignty, as well founded as her title and sovereignty to Massachusetts or Virginia, then the Dutch law, ordinances and customs never had any validity, *as law*, and ceased, instantaneously, on the entry of the English. So, too, if the king's original right of pre-emption in the soil be conceded, his deed of conveyance, before actual entry, was good in law, and the Duke acquired a perfect title.

As to the effect of the English occupation, *ipso facto*, to displace Dutch law existing here, by introducing English law, it is to be borne in mind that, up to this time, all of England's colonies originated in immigration; not one of them was acquired by conquest, with the doubtful exception of the Spanish island of Jamaica. In all her long subsequent career of conquering and annexing French, Spanish, Portuguese and Dutch colonies, in all quarters of the globe, she left them their own laws intact. Hence, in Guiana, in the Cape of Good Hope, and in Ceylon, each afterwards acquired by conquest from the United Netherlands, the Roman-Dutch law, as it prevailed in Holland, at the time they were respectively conquered, is still at the bottom of their jurisprudence. But in the case of New York, that law, except as the articles of surrender expressly allowed it to survive in certain particulars, was never recognized by any English or provincial court, or by crown lawyers, as having any operation here, *as law*, after the surrender, or as governing any of the incidents of land tenure acquired in the province before that date. Ever since then, both before and after the Revolution, the courts of this state appear to have ignored the fact of the Dutch occupation, or, when called on to consider the legal consequences of that occupation upon our jurisprudence, have hopelessly divided on the question, whether New York was to be considered, in law, as acquired by conquest, or on the other hand, was, like Massachusetts or Virginia, an English possession by original right, into which the common law and the statutes of the realm then in force, so far as they were applicable to the condition of the province, followed the surrender as certainly as they followed the first settlement of the other English colonies to the east and south of it. The difference between a conquered or ceded territory, and a plantation made by immigration and settlement, on a previously uninhabited territory, or only inhabited by aborigines, is an important factor in determining the question, in English jurisprudence, of what law governs the one or the other. As to the original right of England, to what is now New York, as against the Netherlands, on the one hand, and France, on the other, diverse opinions have been expressed by judges, law-writers and historians, which the curious in such

studies may find interesting, but which the space at command here does not admit of being even cursorily considered.<sup>1</sup>

#### THE HEMPSTEAD CONVENTION, AND THE NICOLLS CODE.

All writers agree that in settling the first government of New York, a task requiring, under the circumstances, no mean abilities, Colonel Nicolls showed a wise reluctance to interfere with the Dutch administration he found in efficient operation here. The authorities of the Dutch towns, such as Beaverwyck, Rennselaerwyck and Esopus, on the upper Hudson, and of New Amsterdam and the purely Dutch towns in what is now Kings County, continued to administer their small affairs, and to distribute justice, in their own way. The really restive and even seditious towns were those of a mixed population which had been founded by New Englanders in the times of Kieft and Stuyvesant, such as Newtown, Flushing, Hempstead, New Utrecht and Jamaica, and West Chester and East Chester, but more especially the purely English towns, in what is now Suffolk County, never under Dutch government, but settled under the jurisdiction of Connecticut, except Southold, the oldest town on the island, which had elected to belong to the jurisdiction of the New Haven colony. These militant towns, which had turned out an armed force to assist in the subjugation of New Amsterdam, in response to the royal proclamation, on the arrival of the fleet, were by no means satisfied to lose their connection with Connecticut, with whose religion and system of government they were in complete sympathy. Nicolls had promised them, two days after the surrender, that "Deputys shall in convenient time and place be summoned to propose and give their advice in all matters tending to ye peace and benefit of Long Island." Accordingly on March 1/11, 1665, a convention of two delegates from each of the sixteen towns on Long Island and from the town of Westchester, on the mainland, was convened at Hempstead, to whom the deputy-governor submitted a code of laws, since called the Duke's laws. That part of it dealing with capital offences was palpably adopted from the Mosaic Code of Connecticut, the only difference being in dropping the scripture wording and the bible-texts cited in the original. The record of only one of the two or three days' session survives, but it is pretty certain the delegates were expected to accept without debate the decree of the Duke's deputy, though it is said that some changes were suggested and accepted as to particular provisions. The conven-

<sup>1</sup> Mr. Robert Ludlow Fowler, of our bar, has elucidated this question, and has given an account of its progress through our courts, as no one else has, or perhaps could, with equal force, in a series of articles on the "Organization of the Supreme Court" vol. xix. of the *Albany Law Journal*. "His History of Real Property in New York," his introduction to the Grolier Club's publication of "Bradford's Laws," and his chapters on the Constitutional History of the State, contributed to the "Memorial History of New York," are of the first importance to any intelligent understanding of our

juridical history. The question of the validity of the grants of vast tracts of land on both sides of Lake Champlain, made by the French provincial government at Quebec, provoked vehement discussion in the New York Assembly in 1773, when it published a vindication of the British title, as founded on "original right," by virtue of Cabot's discovery, and not by conquest. The question was argued before Kent Ch. J., in *Jackson ex dem. Winthrop v. Ingraham* 4 Johns. 163, but the judgment proceeded on other grounds.

tion was a mere pretense of popular participation in legislation, and deceived no one. It merely served as an occasion to promulgate the proprietary's will. After signing a hypocritical address to His Royal Highness, in which their "cheerful submission to all such laws, statutes and ordinances which are, or shall be, made by virtue of his authority" was declared, the delegates adjourned without day, to meet, on returning to their constituents, an exceedingly uncomfortable reception.<sup>1</sup> Although neither New York, Albany, or Esopus (Kingston) was represented at Hempstead, for the reason, perhaps, that it was only intended for the towns on Long Island and Westchester, where the English predominated, this code came into operation in time throughout the province. The alphabetical arrangement of its subjects and their treatment clearly indicate that its compiler was assisted by some one who was familiar with contemporary New England codes, as well as with the general features of Dutch administration and judicial methods,—particularly compulsory arbitration (or references)—a practice which, in some form or other, has been a characteristic of New York procedure ever since. This code, along with additions made to it from time to time for the next twenty-five or twenty-six years, were declared "null and void and of no effect nor force, in this province" by the first general assembly after the revolution of 1688, as being "contrary to the constitution of England, and the practice of the government of their majesties other plantations in America." Our first historian, writing about 1757, says that all "laws made here antecedent to this period (1691) are disregarded both by the legislature and the courts of law; the validity of the old grants of the powers of government, in several American Colonies, is very much doubted in this province."<sup>2</sup> But it was never doubted in England. While general legislative power *for England* was never claimed by any of her sovereigns, it was never doubted that the crown possessed this high prerogative power over the *colonies*, and that this power was communicable to a subject. In New York, the Duke of York's deputy-governor might, as he did, declare that "no jury shall exceed the number of seven, nor be under six, unless in special causes upon Life and Death, the justices shall think fit to appoint twelve,"—the verdict, in civil cases, to be by a majority vote and perjury to be capital felony in certain cases. But in England, we are told, "the most violent and imperious Plantagenet never fancied himself competent to enact, without the consent of his great council,

<sup>1</sup> In October, 1666, an ordinance was recorded by the Court of Assize "that whosoever hereafter shall any ways detract or speak against any of the deputies signing the address to his Royal Highness, at the general meeting at Hempstead, they shall be presented to the next court of sessions, and if the justices shall see cause, they shall from thence be bound over to the assizes, there to answer for the slander upon plaint or information." In November, 1669, under the governorship of Nicolls's successor, Francis Lovelace, the English towns on Long Island and the towns of Westchester and

Eastchester, on the mainland, petitioned for an assembly of delegates to advise about and approve laws "with ye Governor and his Council as may be for ye good and benefit of ye common wealth," according to the promise made by Governor Nicolls and the rest of the royal commissioners. For answer, they were told that "it doth not appear that Col. Nicolls made any such promise," and moreover the governor's instructions forbade his making any alterations in "ye Lawes of ye government settled before his arrival."

<sup>2</sup> Smith, "History of New York," 124, note.

that a jury could consist of ten persons, instead of twelve, that a widow's dower should be a fourth, instead of a third, that perjury should be a felony, or that the custom of gavelkind should be introduced into Yorkshire."<sup>1</sup>

#### NICOLLS'S JUDICIAL ORGANIZATION.

The only part of the scheme of laws promulgated by the Duke's deputy at Hempstead which can be given here is that establishing a judicial organization for the new government. A town court was established for each town, composed of a constable and two overseers, who might be assisted by a justice, having jurisdiction of civil actions under £5; also a court of sessions for each of the three ridings (into which Long Island and the two towns of Westchester and Eastchester were divided) to be held twice a year, composed of justices of the peace, having cognizance of all criminal cases and of all civil cases over £5; its judgments for sums under £20 being final. Judgments over that amount were appealable to a general court of assize, which was composed of the governor, his council, and the magistrates of the several towns, convening in the City of New York. This high court had original jurisdiction of all criminal prosecutions, and of civil actions for the recovery of more than £20, and was the final court of appeal, except as it permitted a further appeal to the crown. It was, also, made a vehicle, a veritable *lit de justice*—for promulgating and recording the ordinances of the Duke and his council in England, and those of his deputy and council here. Its territorial jurisdiction was as extensive as the Duke's possessions, and therefore included the Pemaquid country (between the Saint Croix and the Kennebec, in Maine), Martha's Vineyard, Nantucket, Fisher's and Gardiner's Islands, some of the towns now in Connecticut, New Amstel, now Newcastle, in Delaware, and, for a portion of its history, New Jersey, besides of course, New York proper as far north and west as Schenectady.

#### NEW YORK CITY MUNICIPAL COURT.

In June following the promulgation of his code of laws, Nicolls set about to reorganize the Burgomasters and Scheppens' Court, the municipal court of New York City. He issued a proclamation (June 12/22, 1665), in which, after reciting his commission and authority, and that, upon mature deliberation and advice, he had thought it necessary to "revoke and discharge the form and ceremony of this government of this his Majestie's town of New York, under the name or names, style or styles of Scout, Burgomaster and Scheppens," he so declared them revoked and discharged. And then, "for the future administration of justice, by the laws established in these the territorys of his Royal

<sup>1</sup> Macaulay, "History of England," i., 35. But Lord Mansfield, though known to have highly rated the royal prerogative, discountenanced the idea that the crown's power of legislating for the colonies, especially those

acquired by conquest or cession, was absolute, and not merely arbitrary. (Campbell v. Hall, Cowp. 209; 20 Howell's St. Trials, 323.)



SEVERAL  
L A W S,  
Orders & Ordinances

Established by the

M A Y O R,  
Recorder, Alder-men and Assistants

O F T H E

City of New-York,

Conven'd in Common-Council,

For the good Rule and Government of the Inhabitants of the said City. And published this 28th Day of  
*March*, in the Mayoralty of *William Peartree, Esq.*  
*Anno Domini 1707*

Printed and Sold by *William Bradford* at the Sign of the Bible in  
the City of *New-York*, 1707.

Highness, wherein the welfare of all the inhabitants, and the preservation of all their rights and privileges granted by the articles of this town upon surrender under his Majestie's obedience are concluded," he declared "that by a particular commission such persons shall be authorized to put the laws in execution in whose abilities, prudence and good affections to his Majestie's service and peace and happiness of this government, I have especial reason to put confidence in, which persons so constituted and appointed shall be known and called by the name and style of Major (Mayor), Aldermen and Sheriffs, according to the custom of England in other his Majestie's corporations."<sup>1</sup>

On the same day, an ordinance was issued which, after reciting that it had been found necessary "to discharge the form of government late in practice \* \* \* to the end that the course of justice for the future may be loyally, equally and impartially administered to all his Majesty's subjects as were inhabitants as strangers," the inhabitants of Manhattan Island were declared to be forever accounted, nominated and established as one body politique and corporate, under the government of a mayor, aldermen and sheriff."<sup>2</sup> For the first year, Thomas Willet was appointed to be Mayor, Thomas Delavall, Olaffe Stuyvesant, John Brugges (or Johannes Van Burgh) Cornelius Van Ruyven and John Lawrence (or John Laurens) to be aldermen, and Allard Anthony (the last Dutch schout) to be sheriff. To the mayor and aldermen or any four of them, full power and authority were given to rule and govern "according to the general laws of the government and such peculiar laws as are or shall be thought convenient and necessary for the good and welfare" of the corporation; and to appoint other officers "for the orderly execution of justice."<sup>3</sup>

Three days after receiving their commissions, these gentlemen met at the Stadt Huys, and organized as a court, called the Mayor's Court, which continued under that name for a hundred and fifty-six years, when its jurisdiction was transferred to other tribunals. The Mayor's Court was the court of sessions for the city, as the justices of the peace of the country towns composed their sessions court. The records were directed to be kept in Dutch and English; the secretary of the old court, Johannes Nevius, was retained, and, with the exception of introducing jury trials, unknown to Dutch procedure, there was no change in the method of doing business. They first met for the trial of civil causes on June 27, 1665, when a jury was impaneled (without doubt the first in New York county) in the case of Francis Douty (Doughty)

<sup>1</sup> Gen. Ent. i., 120-121.

<sup>2</sup> This is not to be taken as the first charter of incorporation of the city. It was first fully incorporated as a city with power to levy taxes for its own support, in May, 1654, under the Dutch regime, and was recognized as a corporate city by Governor Dongan's charter of 1686, in which all its "rights, liberties, privileges, emoluments, etc., as well by prescription as by charter,

letters patent and grants and confirmations not only of diverse governors and commanders in chief of the Nether Dutch Nation, while the same were under their power and subjection," were recited and confirmed. New York City is consequently the oldest municipal corporation in the United States.

<sup>3</sup> Gen. Ent., i, 122-123.

against John Haixman and Khellum Winslow. The record, which is brief, may be worth transcribing, if for no other reason than it shows an instance of a compulsory reference of a part of the issues, a common enough procedure under the Dutch rule, but practically unknown in English procedure. The judgment (which is the only indication the record gives of the nature of the action) was as follows: "The Court doth order that the partyes shall deliver in their evidence to the following juries, to wit: Caleb Burton, Isaacy Bedow, Christ. Hoogland, Balek de Haert, Wm. Dornel, James Ballaine, John Garland, John Browne, Charles Bridges, John Dawrel, Thos. Carvet, Samuel Edsal. The juries doe judge that the defendants shall pay the plaintiff soo much as he shall appeare by true accounts due unto him from the defenders, besides the costs and damages of the Court. The Honable Court does allowe off the above sd Judgment, and Nominates for to view, examine and make up the accounts betwixt the partyes from the tyme that the Bark was sould to Mr. Thatcher til the time that she was returned again to the said Douty, to wit: William Jacob Backer, William Isaacy Bedloo, William Balthazar De Haert and Mr. Samuel Edsal" (two of the jurymen and two outsiders).<sup>1</sup>

#### THE GENERAL COURT OF ASSIZE, 1665-1683.

The first session of the General Court of Assize convened at the Fort, in New York, on the last Thursday (the 28th) of September, 1665, and adjourned the 4th of October. By its constitution, it was composed of the governor and his council, and two justices of the peace of the three several precincts, or ridings, who held courts of sessions for the towns or villages included in them respectively. But the records do not show any general attendance by justices from a distance, and their attendance appears to have been optional, or subject to the summons of the governor. Whenever, on the information of an aggrieved person, the governor was satisfied of the necessity of having justice done, before the next annual meeting of the court, he issued a warrant for a special session to try the cause; or, on an information exhibited to him of a public offense, like a violation of the navigation laws, or a capital crime certified to him by the court of sessions, he issued a commission (generally addressed to the mayor and aldermen) for a court of Oyer and Terminer to try the offender, where more than two months would elapse before the next session of the Court of Assize. There are extant but two volumes of the records of the Court of Assize, one covering the period from September 28, 1665, to December 7, 1672, which is in the State Library at Albany; the other for the period from October 6, 1680, to October 6, 1683, is in the library of the New York Historical Society.

<sup>1</sup> Clerk Johannes Nevius' English is as yet imperfect. The curious reader will find several excerpts from the Records of this Court in Valentine's Manual for 1852, p. 482, *et seq.*

both in a good state of preservation.<sup>1</sup> The earlier records are in the clerkly handwriting of Mathias Nicolls, a namesake, and perhaps a relative, of Colonel Nicolls, with whom he came out, and who appointed him a member of his council, and secretary of the province. As secretary, he was, *ex officio*, clerk of the court. By virtue of his office, he was entitled to sit in courts of sessions in the several ridings, and frequently did so in Queens County, where he was a large land owner. He was mayor of New York in 1672, speaker of Dongan's assembly of 1683, and was on a commission of Oyer and Terminer, the same year. He was a barrister of Lincoln's Inn, a man of character and capacity, and was highly esteemed. He is supposed to have died about 1690. The records of this interesting tribunal, with a territorial jurisdiction reaching to Pemaquid, in Maine, on the east, and to Newcastle, on the Delaware, on the south,<sup>2</sup> have deserved a better fate than has attended them. The record of its session held in New York, October 6, 1680, gives the names of the members of the court, as then present, "the Right, Hon. Sir Edmund Andross, Governor," and his council, five in number, naming them. Then follows: "Francis Rumbout, mayor of the City of New York," and five aldermen (naming them): Richard Betts, High Sheriff of Yorkshire (Long Island), and the names of four justices of the East Riding, one justice of the North Riding, three justices of the West Riding; two commissioners of Albany, one justice of Esopus, three justices of New Jersey, "John Gardiner, Chief Justice of Nan-tucket," and two justices of Pemaquid, Cogear Knapton and John West. It must be remembered that besides distributing justice, the Court of Assize was a *quasi* legislature. Its records consist of ordinances, prescribed forms of summonses and subpoenas, commissions of officers, oaths of allegiance and of office, letters of denization, popular petitions and the answers thereto, besides the details, with reasonable fulness, of cases on appeal from inferior courts, and of trials in civil, criminal, equity, admiralty and prize cases, exchequer cases, and what not. As the regular term of the court was held but once a year, and its business was generally completed within a week, the governor was frequently called upon, in the interim, to hear motions in causes of one kind or another,<sup>3</sup> not admitting of delay.

<sup>1</sup> The province having been recaptured by the Dutch in September, 1673, was occupied by them, from that time to October of the following year, during which period the old Court of Burgomasters and Scheppens was re-established. Its records are, with those of the old court, now in possession of the clerk of the board of aldermen. If any records of the Court of Assize are extant, for the period after the re-occupation by the English up to October 6, 1680, the writer has not seen them.

<sup>2</sup> At the February term of the court held 1679-80, an appeal was heard "from a verdict and judgment given at the Court of the Whorkill"—that is, on the Delaware. The judgment below, which was "for the defendant for title of land called Willingbrook, 'first surveyed for, seated and improved by him,'" was affirmed

with costs. It is worth mentioning that, at this same term, in one case, in which there had been an affirmance, the appellant "craves an appeal to the King and Council which is granted giving Security according to law."

<sup>3</sup> Here is a specimen order found in "General Entries," Vol. 1, p. 82. "Under the petition and complaint of Andrew Messenger, who hath made his appeal unto me concerning a judgment which hath past against him in your courts, as he supposeth very wrongfully, I do hereby request and demand that you proceed no further in the case, but that you with those that are concerned appear before me on Thursday the 2d of February, next, in the forenoon, that I may the better understand the matters in difference between you and give you my opinion thereupon.

The minutes of the court, or the record of its daily proceedings in term time, are full enough to give a good idea of the merits of any particular controversy, and, taken together, furnish a tolerably clear picture of the social and economic condition of the province for the first eighteen years of the English dominion. One cannot say that the records disclose any instance of outrageous injustice, or serious departures from judicial propriety, but its verdicts were sometimes set aside by the governor and council, in consideration, as the record says, of "the equity of the case." Thus, on the first day of the first term of the court (September 28, 1665), the case of John Richbell against the inhabitants of the town of Huntington was tried before a full bench, Governor Nicolls presiding, and a jury of seven. Mr. John Rider appeared for the plaintiff, who, the record says, "declares upon an account of trespass for that the defts' have given plaintiff unjust molestation, in the possession of a certain parcel of land, commonly called Horse Neck, to his damage, etc., whereupon he brings his suit."

The plaintiff proved his title through mesne conveyances from one Daniel Whitehead "who was the first purchaser thereof from the natives"; he then proved a subsequent "confirmation thereof from the Grand Sachem Wyandance, which was produced." The plaintiff

"Given under my hand at James Fort in New York, this 10th day of January, 1664-5. RICHARD NICOLLS, To the Magistrates of Jamaica."

The following order was made by Governor Lovelace in 1663. It appears by the recital that Captain John Carr (the commandant on the Delaware) had laid an attachment upon some debts there due to John Garland of New York by Isaac Bedlow, which the latter had paid over to Carr. The governor's order, which is addressed to "William Torn as Attorney to Mr. John Garland," after the recitals, says: "these are to authorize and appoint you that you forewarn him the said Captain Carr from intermeddling any more in that matter, And the said John Garland hath hereby liberty by

*Lovelace*  
"himself or his attorney  
"to ask, demand, sue  
"for, recover and receive  
"all those debts in the  
"same specie agreed on  
"and according to the

"contract made with the respective debtors. And if it shall appear that the said Carr hath received any part of the same in any other pay, he is to make it good to Mr. Garland or the debtors to make payment of it



LORD LOVELACE.

"against the said John Garland or his order having paid the former in their own wrong. Given &c., 5th day of August, 1669."

We give one more instance of Lovelace's summary method of vacating an attachment: One Arthur Strangeways was a carpenter engaged in building a house at Newtown for one Ralph Hunt, but the governor required him to work upon a ship he himself was building, whereupon he left Mr. Hunt's employment. Hunt at once got out an attachment against the carpenter for breach of covenant and levied upon certain moneys owing to him by Arthur Hotchman and one John Smith; which coming to the knowledge of the governor, he made an order August 6, 1669, addressed to the justice of the peace, constable and overseers at Newtown, which commanded them (inasmuch as carpenter Strangeways had been hindered in his contract to build Hunt's house "upon the account of working as a carpenter at my ship, which is a public employment tending to the good of the country in general") "to cause the said attachment to be taken off from both the said sums, the said Arthur Strangeways being free from any other private engagement of work as long as he is employed by me."



having rested, (the record proceeds), "Mr. Leveredge, attorney for the defendants, in answer to the pl't's declaration, denies the unjust molestation, and pretends the want of timely benefit of the declaration. He argues the def'ts title to Horse Neck to be more valid, as being more ancient than the pl't's." The town of Huntington founded its title, through mesne conveyances, from the founders of Oyster Bay, who purchased large tracts of land in the neighborhood from the natives, long before the Grand Sachem Wyandance's confirmation of the deed to the plaintiff's grantor. But the great defect in defendant's case was that Horse Neck was not mentioned by name in the Oyster Bay deed, and plaintiff, in rebuttal, showed that it was "reserved by the Indians at their sale, for hunting," by the testimony of several of the original purchasers of the Oyster Bay and Huntington land. The substance of the testimony, and of the arguments of the respective counsel, is readily perceived, and the record is quite equal to the work of a modern newspaper reporter of court proceedings. "After a long debate of the cause on both parts, it was referred to the jury, who next morning brought in their verdict, as followeth, viz. That upon serious consideration of the cause depending between Mr. Richbell, and the town of Huntington, weighing all the evidence, we find for the defendant, we finding that the ancient deed is the right of the town of Huntington, wherein we find, by the bounds of Huntington's deed, and by evidence, that Horse Neck (which is in the controversy) be within the bounds of Huntington's deed, unless further light can be made appear unto us by the honored governor and council, and that the plaintiff shall pay all costs, and charges depending upon this suit." The record proceeds, and concludes as follows :

"The court having heard the case in difference between the pl't and defendants debated at large, concerning their title to a certain parcel of land commonly called Horse Neck, and having also seen and perused their several writings and evidences concerning the same, it was committed to a jury who brought in their verdict for the defendants, upon which the court demurring did examine further into the equity of the cause and upon mature and serious consideration, do find that the said parcel of land called Horse Neck doth of right belong to the pl't, it being purchased by the said pl't for a valuable consideration, and by the testimony of the first purchasers under whom the defendants claim was not conveyed or assigned by them to the defendants, with their other lands, upon which and divers other weighty considerations, the court doth agree, that the said parcel of land called Horse Neck doth of right belong and appertain unto the plaintiff and his heirs. And it is hereby ordered, that the high sheriff or under sheriff of the North Riding of Yorkshire upon Long Island, do forthwith put the said plaintiff, or his assignes, in possession thereof. And all persons are hereby required to forbear giving the said pl't

or his assignees, any molestation, in the peaceable and quiet enjoyment of the premises."<sup>1</sup>

As might be expected, in a newly settled country, there was a good deal of litigation over land titles, but the records disclose a wide range of judicial business, from petty civil cases to indictments for capital offences, including one against Ralph Hall, and another against his wife, for that they, "by some detestable and wicked arts, commonly called witch craft and sorcery, did (as is suspected) maliciously practice and exercise at the said town of Seatalecott [Brookhaven], &c., on the person of George Wood, late of that place, by which wicked and detestable arts, the said George Wood (as is suspected) most dangerously and mortally sickened and languished, and not long after, by the aforesaid wicked and detestable arts, the said George Wood (as is likewise suspected) died." There was a second count for bewitching the infant child of the widow of said George Wood. The case was tried October 2, 1665. Both of the prisoners pleaded not guilty, "and threw themselves to be tried by God and the country." The record says, that "thereupon several depositions, accusing the prisoners of the facts for which they were indicted, were read, but no witnesses appeared to give testimony in court *viva voce*." Nevertheless, "the case was referred to the jury who brought in the following verdict: We have seriously considered the case committed to our charge, against the prisoners at the bar, and having well weighed the evidence, we find that there are some suspicions, by the evidence, of what the woman is charged with, but nothing considerable of value, to take away her life. But in reference to the man, we find nothing considerable to charge him with." The record proceeds: "The court thereupon gave this sentence, that the man should be bound body and goods for his wife's appearance at the next sessions, and so on from sessions to sessions, as long as they stay within this government, in the meanwhile to be of good behavior. So they were returned into the sheriff's custody and upon entering into a recognizance, according to the sentence of the court, they were released."<sup>2</sup>

This was twenty-three years before the witchcraft superstition became deadly in Massachusetts; it did not become epidemic in Salem village until 1691-2, when a special court to try the witches was created, whose sanguinary proceedings have left a lasting stain upon

<sup>1</sup> The land in suit, still called Horse Neck, is in the town of Greenwich, Conn., on north shore of Long Island Sound, opposite Huntington, on the south shore. It is true that in December of the year previous to this lawsuit, the Connecticut Commissioners had "tricked" Governor Nicolls and his fellow commissioners into agreeing to Mamaroneck creek as the boundary, whereas it should have been (according to all New Yorkers) several miles further east, so as to have included Horse Neck; but the matter was not yet finally determined, for "the absurd error was soon detected, and the boundary was never ratified by the Duke of York, or by the crown." Brodhead, ii., 56.

<sup>2</sup> On August 21, 1668, Governor Nicolls gave the following release to Ralph Hall and his wife, from their recognizance: "These are to certify to all whom it may concern, that Ralph Hall and Mary, his wife, (at present living upon Miniford's Island,) are hereby released and acquitted from any and all recognizances, bonds of appearance or other obligations entered into by them or either of them, for the peace of good behavior, upon account of any accusation or indictment of witchcraft, brought into the Court of Assizes against them in the year 1665; there having been no direct proofs nor further prosecution of them since. Given under my hand," etc.

the puritan judiciary of Massachusetts. That an accusation of witchcraft should have been made in New York in 1665 does not excite our special wonder, for a belief in its possibility was universal at that period, and being, as was supposed, founded on Scripture, was likely to be fostered by the clergy. We



GOVERNOR THOMAS DONGAN.

do not know the contents of the depositions on which Hall and his wife were indicted and tried, but it is evident that the trial was conducted with a decent regard for truth, and with a judicial sobriety which contrasts forcibly with the bloodthirsty and law-defying proceedings of the Massachusetts judiciary, in whom reason and every humane feeling seem to have been completely overwhelmed in that brief period of nervous exaltation.

The last session of the Court of Assize was held October 3, 1683, Governor Dongan presiding. Though a soldier and not a lawyer, he is said by one of the members of the court to have "behaved with discretion, patience and moderation, showing in him that principle of honour, not wilfully to injure any, and having a regard to the equity of all his judgments."

#### THE EARLY LAWYERS.

Up to this time, and for some years thereafter, there was nothing in the province recognizable as a bar, that is, no distinct class of professional lawyers. The Assize Court records give the names of a number of "attorneys" as appearing for one or the other parties litigant before it, such as John Sharpe, John Rider, Thomas Owen, Mr. Leve-ridge, Mr. Bogardus and Nicholas Bayard. Other names appear in the records of the Mayor's Court. It does not follow that any of these were bred to the law, or made its practice an exclusive employment. They were traders, factors for foreign merchants, land speculators, or, it may be, mechanics, who, possessing a recognized talent for managing affairs, or for penmanship, or an easy volubility, were likely to be called on by their neighbors to act as conveyancers, attorneys, or advocates, as the matter in hand might require.

There does not appear, however, to have been in New York such a popular prejudice against lawyers, as a class, as was notoriously the case in some of the other colonies, particularly in Massachusetts Bay. Following the code of that colony, the Nicolls Code provided for the punishment of common barrators—"vexing others with unjust, frequent

and endless lawsuits," as the statute reads, by fine and imprisonment; besides, "it shall be in the power of the court to reject his cause." It was also provided that no justice of the peace, while in commission, should be an attorney in any case, and "no high Sheriffe under Sheriffe, high Constable, petty Constable or Clarke of the Court shall be permitted to plead as Attorney in any Persons behalfe in the Court where he Officiates." In the case, however, of a poor person, not able to plead his own case, the court, on his request, might assign him either of these officers to plead for him; "but the person so pleading the poor man's case is not to give judgment." These officers, also, where they were agents or attorneys-in-fact of non-residents, or absentees, and therefore "liable to be sued for their Employers," might "plead and prosecute in any cause that shall any way Concern their said Employers." The inhibition of justices of the peace, acting on behalf of a litigant, was, no doubt, due to the fact that they were, *ex-officio*, entitled to sit in the Court of Assizes; and a justice might thus have a vote, on an appeal, in a case in which he had been an advocate in the court below.

#### THE NEW CONSTITUTIONS OF 1683 AND 1691.

The year 1683 is memorable in the history of New York, as that in which the first representative assembly convened and entered upon the business of legislation. Colonel Thomas Dongan, who came out as the Duke's deputy in August of that year, was authorized by his instructions to issue writs to the proper officers in every part of his government for the election of "a general assembly of all the freeholders by the persons who they choose to represent them," not to exceed eighteen, it being the Duke's declared "resolution" that such laws propounded by it "as shall appear to me to be for the manifest good of the country in general and not prejudicial to me," would receive his assent and confirmation. The first session of this notable assembly convened October 30, 1683; the second on October 21 of the following year, at both of which laws were "propounded" of singular historical interest, but which, for lack of evidence of their having ever been assented to by the Duke, have not been regarded as legal enactments. No record of the names of the members of this first general assembly, or of their deliberations, survives, except that we know Mathias Nicolls, for many years the secretary of the province, was the speaker, and John Spragg, the then secretary of the province and a member of the council, was the clerk. We have also the titles of the fourteen several bills passed. A second assembly, convened on November 3, 1685, was dissolved by proclamation January 30, 1686, by reason of the Duke's having in the meantime ascended the throne as James II. New York, no longer the private domain of a subject, now became a province of the crown. Theretofore, in respect to its local government, and the appointment of officers to administer it, New York was a county palatine, like the counties of Chester, Durham and Lan-





with the advice and consent of the council, or the major part of them, to make, constitute and ordain laws, statutes and ordinances," etc. The extra legal character of the laws "propounded" by the Duke's assembly of 1683 does not detract from the honor due to the men who initiated them—to Governor Dongan particularly, whom all our historians unite in praising as most truly a "New Yorker." The most important of these measures were substantially re-enacted eight years afterwards, by the first assembly elected under William and Mary, in 1691, which adopted a resolution intended to annul all the acts of the Dongan assembly, and the several ordinances of the late government. This put an end to the courts which had been organized by Dongan, and which we must suppose had been open during the preceding period of revolutionary confusion. The Dongan "Act to settle courts of justice," besides abolishing the Court of Assize, had provided a new system of local administration by town and county courts and boards. There was to be a petty court for each town, a county court or Common Pleas, for each county, a Court of Oyer and Terminer, and a Court of Chancery for the whole province. The latter court was to be composed of the governor and council—which was only giving a high-sounding, but hated name, to a body which, from the first, had assumed chancery jurisdiction. As judges of the Oyer and Terminer, Dongan had appointed Mathias Nicolls and John Palmer, an English lawyer who had come to New York from the Barbadoes in 1674. Thomas Rudyard, a London lawyer, and formerly lieutenant-governor of New Jersey, was commissioned the Duke's attorney-general, and James Graham was made the first of the long line of recorders of the city, taking his seat on the bench, "on the right hand of the mayor," December 4, 1683. The governor retained for himself, as all his predecessors had done, the functions of a surrogate or probate judge for the whole province. The governor and council were also decreed to constitute a Court of Exchequer, which was to meet on the first Monday of each month. This first period of the juridical history of New York, as an English province, was closed by the English revolution of 1688, fitly enough characterized as the "happy revolution"



SEAL, DONGAN CHARTER.

in England, and for Englishmen living there, but full of disappointment to their majesties' subjects living in distant America. In New York, especially, the hopes aroused by the seating of the new sovereigns on the throne soon suffered a dismal defeat—the event being attended by tragic circumstances, which originated social and political diversities unexampled for their bitterness and long continuance. The king, a born Netherlander, the citizen of a republic, and the life-long enemy of Louis XIV., the impersonation of absolutism, might naturally be counted on as a friend of civil and religious liberty at home and abroad. If his Dutch kin in ancient New Netherland ever imagined that he would turn a more kindly eye or listening ear to them now that he had become their sovereign king, the illusion was but transitory. He had no heart, it is said, for anything but continental politics, and incidentally to preserve from further curtailment, in home affairs, as much of the royal prerogative as the wreck of the revolution had left intact. Colonial affairs seem never to have attracted his attention or excited his interest further than to resist the suggestion made to him, to surrender some portion of his prerogative powers of governing the colonies himself in council. It was the Englishmen at home who gained new guarantees of constitutional rights, enlarged freedom from arbitrary power and security against unrestrained prerogative. As for Englishmen in the colonies, their relation to the crown remained what it always had been, which was, according to William's first chief-justice of the King's Bench, Holt, that "their law is what the King pleases"; for, according to Granville,—a member of his privy council,—"the governor's instructions are the law of the land, for the King is the Legislator of the Colonies." Under the instructions—copied nearly verbatim from the Duke of York's instructions to Dongan—given to Colonel Henry Sloughter, William's first governor, who arrived March 19, 1691, writs were issued for a general assembly of freeholders, which accordingly convened on April 9. The law-making power was vested not in this body, however, but in the governor, acting with the consent of the council and a majority of the assembly, subject of course to the approval of the sovereign. To the end of the colonial period, the enacting clause of all bills was: "Be it enacted by his Excellency the Governor, by and with the consent of the Council and Assembly, and by the authority of the same." Some very notable legislation was effected, however, by this assembly. It re-enacted, with slight variations of language, some of laws noticed above as having been passed by Dongan's discredited assembly of 1683, one of which, entitled "An act for declaring what are the rights and privileges of their Majesties' subjects inhabiting within this province of New York," does not differ greatly from the "Charter of Libertyes and privileges" of Dongan's assembly; but it met the untoward fate of its original, and was vetoed by the king, six years after its passage. But perhaps its most important work was providing a system of county government by officers

(supervisors) chosen by the electors of the several towns, and a county treasurer, elected by the voters of the county at large.

Though this scheme of county government was abolished in 1701, it was re-established in June, 1703, and has continued ever since without material modification. Counties in New England and in the southern states have never been much more than mere geographical expressions, without any corporate existence or system of local administration. The New York supervisor system of local government, thus created, "was destined to have a profound influence on the subsequent development of local administration in the United States."<sup>1</sup> In a somewhat modified form, it was very soon adopted by Pennsylvania. "To New York first, and next to Pennsylvania," says a competent authority, "belongs the honor of predetermining the character of local government in the west. But if New York was the first to return to the ancient practice of township representation in the county court, it was in Pennsylvania that the capabilities of the independent county were first tested. New York is the parent of the supervisor system."<sup>2</sup>

Another important act passed by the first assembly of 1691, was "for Establishing Courts of Judicature." Besides various local tribunals then existing, it erected a Supreme Court, to sit in New York, consisting of a chief justice, a second justice and three associate justices, to be commissioned by the governor, on a royal mandamus from Westminster.

Appended to a list of all the officers in the civil service of the province on April 20, 1693, made by Matthew Clarkson, the secretary, is "An Account of all Establishmtes of Jurisdiction within the Province," as follows:

*"Single Justice.* Every Justice of the Peace hath power to determine any suite or controversy to the value of fourty shillings.

*"Quarter Sessions.* The Justices of the Peace in quarter sessions have all such powers and authorities as are granted in a Commission of ye Peace in England.

*"County Court.* The County Court or common Pleas both cognizance of Civil acccons to any value excepting what concerns title of land, and noe accôn can be removed from this Court if the damage be under twenty pounds.

*"Mayor & Alderem.* The Court of Mayor and Aldermen hath the same power with the County Courts.

*"Supreme Court.* The Supreme Court hath the powers of Kings Bench, Common Pleas & Exchequer in England and noe accôn can be removed from this Court under £100.

*"Chancery.* The Governour and Councill are a Court of Chancery, and have the powers of the Chancery in England, from whose Sentence or decree nothing can be removed under £300.

*"Prerogative Court.* The Governour discharges the place of Ordin-

<sup>1</sup> Professor Frank J. Goodnow, "Comparative Administrative Law," (N. Y., 1893), i, 168.

<sup>2</sup> Professor Howard, "Local Constitutional History of the U. S.," i, 387.

ary in granting administrons and proveing Wills & The Secretary is Register. The Governr. is about to appoint Delegates in the remoter parts of the government, with Supervison for looking after intestates estates and orphans.

*"Court Marshall.* The Governr. hath established a Court Martiall att Albany whereof Major Richd. Ingoldesby is President and Robert Livingston Judge Advocate, who with the other commissioned Captains att Albany have power to exercise Martiall Law being a frontier gar- rison and in actuall warr.

*"Admiralty.* Their Magesties reserve the appointment of a Judge, Register, and Marshall."

### THE SUPREME COURT.

The declaration of our Code of Civil Procedure, that the Supreme Court of the State of New York possesses (subject to certain constitutional limitations) "all the jurisdiction which was possessed and exercised by the Supreme Court of the Colony of New York, at any time," refers to the Supreme Court established by the act of 1691. The court was declared by its original constitution to have cognizance of all actions civil, criminal, and mixed, as fully and amply as the King's Bench, the Common Pleas, or the Exchequer, in England. Its civil jurisdiction was limited to actions for the recovery of sums exceeding £20, and suits for that sum or over in inferior courts were removable to it. Appeals from civil judgments of the Supreme Court lay to the governor and council, where the amount exceeded £100 in value, until 1753, when the amount was increased to £300. Where the amount exceeded £500, an appeal was permitted to the king in council, provided it was taken within fourteen days after entry of judgment, and the appellant secured payment of final judgment and costs.

The court was to be composed of a chief-justice and four associate or puisne judges, the chief-justice and two judges making a quorum. In 1701, however, two of the associate judges were dispensed with. Fifty-seven years afterward, in November, 1758, to accomplish the increasing business of the court, another judge was added, making four in all, including the chief-justice, and this constitution of the court continued down to the Revolution. Until 1769 the associate judges ranked according to their designation in their respective commissions, as second, third, or fourth judge, but after that date they ranked according to the dates of their commissions.

At first only the chief-justice and the "second judge" received salaries—the one £130 and the other £100 per annum. In 1698 the chief-justice's salary was reduced to £100; four years afterward, in 1702, it was raised to £300, with a fee of ten shillings on the first motion in every cause, the second judge being at the same time awarded £150, and the three associates £50 each. In 1765 the associate judges' allowance was raised, for riding circuits, to £200. After 1774



the chief-justice was to receive £500 sterling from the crown, and in addition £300, New York currency, from the provincial treasury, the other judges' salaries remaining at £200, New York currency, equivalent to £100 sterling, besides their fees.

The judges of the new court were announced at once on the passage of the act, and very soon met and organized for business. Joseph Dudley was named chief-justice, Thomas Johnson second judge, with William Smith, Stephen Cortlandt (otherwise called Stephanus Van Cortlandt), and William Pinhorne, puisne judges. Of these only Van Cortlandt was a native of the province, and none of them was regularly bred to the law, though, in 1691, this was no great matter in the disposition of the great bulk of litigation as between man and man. The chief-justice was a native of Massachusetts, from which he had been expelled in disgrace, and had come here from England on a promise of the chief-justiceship when the court should be made up. He remained in office, however, for eighteen months only (May 15, 1691, until November 11, 1692), when he was suc-



ONE OF A PAIR PRESENTED BY BELLOMONT TO COLONEL ABRAHAM DE PEYSTER.

ceeded by his associate, William Smith, a native of England, but a resident of the province since 1686, a notable man, and a leader of the presbyterian or "republican" party of the day and long after.<sup>1</sup> After a service of eight years, he was displaced (October 30, 1700) for about a month, Van Cortlandt taking his seat for that period (October 30 to November 25, 1700). Again commissioned, he was compelled to give way two months afterward to Abraham De Peyster, than a puisne judge, who was appointed temporarily until the new chief-justice, appointed directly by the crown, should arrive from England—William Attwood. But within less than a year, this, the first regularly trained lawyer who occupied the office, fled the province in disguise at night to escape arrest by the new governor just arrived. William Smith was restored to the chief-justiceship, which he held until another English-bred lawyer could be sent over—John Bridges, doctor of laws, who was commissioned April 5, 1703. Doctor Bridges having died within less than a year, Roger Mompesson, a native of England, a barrister, at one time recorder of Southampton, was commissioned (July 15, 1704) chief-justice of New York and New Jersey, in which latter province,

<sup>1</sup>The first minutes of the Supreme Court of which the writer has any knowledge are those of the term commencing April 4, 1693, at which Chief-Justice Smith presided. They are written on the reverse pages of the

last record book of the old Court of Assize, bound in parchment, which is in the library of the New York Historical Society.



or in Philadelphia, he resided at the time. During his tenure he claimed to have made the practice of the courts of the province "more conformable to the practice of Westminster Hall than any other of her Majesty's plantations in America." On his death, while in office, he was succeeded by Lewis Morris (March 13, 1715), a native of New York, but long a resident of New Jersey, where he had been a conspicuous figure in the popular opposition to Governor Cornbury. But his pronounced presbyterian or republican partisanship here, and especially his dissenting opinion in the great case of Governor Cosby *against* Rip Van Dam, which he took pains to print with an ill-tempered philippic against the governor, led to his removal in 1733, to give place to a typical high-prerogative, anti-republican native of the province, James De Lancey, then second judge of the court; who continued in the chief-justiceship until his death, July 30, 1760. His successor, Benjamin Pratt, commissioned November 11, 1761, was a native and resident of Massachusetts, eminent for learning in the annals of that colony, but treated, at the outset of his brief career here, with great indignity both by his associate judges and by the leaders of the bar, for no reason apparently but that he was a non-resident, and had accepted his commission "during pleasure" instead of for life conditioned on good behavior. He died in office. His successor, the eleventh and last chief-justice, Daniel Horsmanden, a native of Kent, England, had been an associate judge of the court since January 24, 1736; he was advanced to the chief-justiceship March 16, 1763, when he was over seventy years of age, and continued in office until his death, after the Declaration of Independence, on September 20, 1778. William Smith, the younger, son of the chief-justice of that name above mentioned, who, in his youth, had published his "History of New York," and was an ardent whig, received the appointment of chief-justice during the war, when he became a loyalist, but it is doubtful if he ever held court; and having left the province with the British troops at the close of the war, he is not generally accounted one of our chief-justices.<sup>1</sup>

<sup>1</sup> Personal notices of these men, highly distinguished in their day, are reserved for future pages of this work, but it may be found interesting to give here a list of the judges of the court down to its dissolution, with the dates of their several commissions.

#### CHIEF-JUSTICES OF THE SUPREME COURT.

Joseph Dudley,	commissioned	May	15, 1691
William Smith,	"	November 11,	1692
Stephen Van Cortlandt,	"	October 30,	1700
William Smith,	"	November 25,	1700
Abraham De Peyster,	"	January 21,	1701
William Attwood,	"	August 5,	1701
William Smith,	"	June 9,	1702
John Bridges,	"	April 5,	1703
Roger Mompesson,	"	July 15,	1704
Lewis Morris,	"	March 13,	1715
James De Lancey,	"	August 21,	1733
Benjamin Pratt,	"	November 11,	1761
Daniel Horsmanden,	"	March 16,	1763

#### ASSOCIATE OR PUISNE JUDGES.

Thomas Johnson,	commissioned	May	15, 1691
William Smith,	"	May	15, 1691
Stephen Van Cortlandt,	"	May	15, 1691
William Pinhorne,	"	May	15, 1691
William Pinhorne,	"	April 3,	1693
Chidley Brooke,	"	April 3,	1693
John Lawrence,	"	April 3,	1693
John Guest,	"	June	1698
Abraham De Peyster,	"	October 4,	1698
Robert Walters,	"	August 5,	1701
John Bridges,	"	June 14,	1702
Robert Milward,	"	April 5,	1703
Thomas Wenham,	"	April 5,	1703
James De Lancey,	"	June 24,	1731
Frederick Philipse,	"	June 24,	1731
Frederick Philipse,	"	August 21,	1733
Daniel Horsmanden,	"	January 24,	1736
John Chambers,	"	July 30,	1751

To write the history of the Supreme Court of New York for the eighty-five years preceding its dissolution, on the Declaration of Independence, is to write the political, and, in large measure, the social, history of the period, which is quite beyond the purpose here. The reluctance with which William III. consented to the erection of this high court by statute, rather than by a mere executive ordinance revocable at will, is made apparent by the proviso of the act creating it, which limited the court's existence to a period of two years. As nothing occurred, however, in the conduct of the court, during the first two years of its existence, inimical to the king's ideas of governing the province by royal prerogative, the limitation was extended, from time to time, by subsequent legislation, until 1698. The court was thereafter continued, not by legislation, but by the governor's proclamation of January 19, 1699, and then, finally, by the order of the governor in council, under date of May 15 of the same year. This assumption, on the part of the crown, of a right to erect a court of justice, or to revive a defunct court, gave excuse, on at least one notable occasion, for a great popular outcry against the court, on a plea to the court's jurisdiction being raised in a pending case; the contention on the part of counsel being, in effect, that the court had had no legal existence subsequent to the expiration of the limitation fixed by act of assembly; that the fundamental principles of the British constitution were as controlling in New York as in England, and that as the king could not constitutionally, of his own will, erect and maintain a court of justice at home, he could not do so here. The king's claim of right to rule by prerogative in the colonies, any further than in England, was contested in New York mainly by the lawyers, in pending litigation at the bar of the Supreme Court, and this, with a frequency and persistency unknown, because uncalled for, in neighboring colonies which lived under the guarantees of written charters, by which the right of government by prerogative was to a greater or less degree surrendered by the crown to the people. These forensic discussions at the bar, as they occurred from time to time, filled the court-house with eager, and sometimes applauding and even riotous audiences; they were subsequently rehearsed in every tavern tap-room, and thus was begot that familiarity with, and stubborn devotion to, the underlying doctrines of institutional liberty, under English law, which became characteristic of the province, notwithstanding the diversity of nationalities which, from



Daniel Horsmanden,	commissioned July	28, 1753	Wm. Smith, the elder, commissioned	March	16, 1763
David Jones,	"	November 21, 1758	Robert R. Livingston,	"	March 16, 1762
Daniel Horsmanden,	"	March 26, 1762	George D. Ludlow,	"	December 14, 1769
David Jones,	"	March 31, 1762	Thomas Jones,	"	September 29, 1773
David Jones,	"	March 16, 1763	Whitehead Hicks,	"	February 14, 1776

first to last, made up its population. The great landlords—so-called lords of manors—and the rich city merchants, always in control of the assembly, were as apt as not, according to their interests, to be leaders of the opposition to the government, in its endeavors to enforce, in the courts, the navigation acts, suppress smuggling, and collect the crown's quit-rents. As between the assembly which granted their salaries, and the governor, who could at any time recall and revoke their commissions, the judges found themselves, more than once, grievously embarrassed. Their annual stipends and their tenure of office were equally uncertain. All of them were, almost of necessity, what would now be called politicians; that is, participants in the endless disputes between the assembly and the executive, which make our colonial history such tiresome reading. The chief-justice was *ex-officio* president of the council, and many of the puisne judges were, while in office, its members.



FIRST NEW YORK POORHOUSE, 1734.

They were therefore legislators as well as judges, and not infrequently blocked the legislative efforts of the assembly. Chief-Justice De Lancey was commissioned lieutenant-governor by George II. in October, 1747, and a vacancy in the governorship recurring in July, 1757, he became and continued, until his death three years later, chief executive of the province, besides being its chief-justice. It was repeatedly charged against the

assembly, controlled, as it generally was, by those who resented anything like a strict enforcement of the navigation acts, and an honest collection of the crown's quit-rents, that it attempted to control the appointment of judges, or to coerce their judicial decisions, by withholding their salaries.

Writing to the Lords of Trade (January 11, 1761), Lieutenant-Governor Colden attributed the obstinacy of the assembly in refusing salaries to the judges to "a formed design of undue influence," and a determination "to have no chief-justice unless he be a gentleman of estate in this province"—a position, he says, which "takes with the people," but in his opinion, both the king and the inhabitants may more safely trust the administration of justice with a stranger, who has no private connections, than with an inhabitant. "Sure I am that men of greater abilities may be found out of the province than in it." To yield to the assembly in this matter would, he thinks, affect disastrously the whole administration, for while few people had any dependence on the governor, "a chief-justice has an influence on every man in it; because no man knows when he may have a dispute at law

with his neighbour." "If then," he continues, "a chief justice for life, with large family connections, form a party, to serve ambitious or interested views, the governor must either become the tool of this party or live in perpetual contention. This is not a mere hypothesis; we had not long since a glaring instance of it." To prevent these evils, he urges that the chief-justice's salary be allowed by the crown out of the quit-rents of the province, and thus save the governor from the dilemma of appointing according to the dictation of interested and ambitious men, or of leaving the province without a court of justice. The "glaring instance" referred to was the conduct of the assembly and the bar on the arrival from Massachusetts of the new chief-justice, Benjamin Pratt, who had been commissioned "*during pleasure*," instead of *good behavior*, as his predecessor De Lancey had been. As matter of fact, De Lancey's original commission (September 14, 1744), like those of all his predecessors, ran during pleasure; it was not until eleven years afterward that the governor, by way of compliment or reward, presented him with a new commission, running during good behavior—that is, for life.<sup>2</sup> Nevertheless, the complacency of the new chief-justice in accepting his commission on a condition "contrary to New York precedent," was seized upon by the so-called republican faction, then in control of the assembly, as an additional weapon in its pending controversy with the party in power—the party "supporting the established constitution"; though in truth the bestowal of the second office in the province upon a stranger was far from being agreeable to either party. The three other judges of the court, Daniel Horsmanden, John Chambers, and David Jones, all of whose commissions were in abeyance by reason of the death of King George II., not only had reason to be disappointed in not being preferred for the first place, but were indignant that the new chief-justice should have accepted his commission on other terms than for good behavior. Judge Chambers was so affronted by Pratt's appointment that he resigned his commission outright. Judge Horsmanden and Jones refused to accept a renewal of their commissions on the terms offered. The situation was particularly embarrassing for the chief-justice; for the January term of the court occurring in the month of his taking the oath of office, he was obliged to sit alone for the whole term. According to a contemporary, he was "unacquainted with the practice of the court and the laws of the colony, and found himself so perplexed and bewildered that as soon as the term ended he applied to Mr. Colden, the lieutenant-governor, and begged that the bench might be filled up."

The assembly had passed resolutions severely reflecting upon the chief-justice for accepting his commission "*during pleasure*," and inveighing against Colden for refusing to grant commissions "*during*

<sup>1</sup> N. Y. Col. Docs., vii., 463.

<sup>2</sup> Smith's statement, made in his History (published 1775), that the second and third judges were commis-

sioned formerly during pleasure, but of late, "*quamdiu bene se gesserint*," is not verifiable.



good behavior"—both of them being declared enemies to the colony, to the government and the constitution, and threatening to grant no salaries either to Colden or to the judges unless judicial commissions were to run during good behavior. To this Colden had responded, that he was willing to comply with the assembly's wishes in that regard, and thus make the judges independent of the crown, provided the assembly would settle upon them fixed salaries determinable only on the expiration of their respective commissions, thus making them as independent of the assembly as they would be of the crown. This, however, they were not willing to do. But after the fury of the controversy had spent itself, the lieutenant-governor sent for the other judges, as requested by the chief-justice; they agreed to consult their friends, and in a short time consented to accept their commissions on the terms offered—that is, during pleasure.

The contention of the whig lawyers that, by English law, judges were not to be commissioned for years or a term, or during pleasure,



THE BATTERY IN 1746.

was not now heard for the first time in the province.<sup>1</sup> It had been made, by way of a plea to the jurisdiction of the Supreme Court, twenty-five years before, in the famous prosecution for criminal libel, at the instance of the governor, of John Peter Zenger, whose trial before Chief-Justice De Lancey and a jury, in January, 1735,

gave rise to the most extravagant expressions of public feeling during its progress, and of popular demonstrations of joy on the final triumph of the defence. It appears that Zenger, the printer of the *New York Weekly Journal*, the second newspaper published in the province, had published at the supposed instance of James Alexander, William Smith, and other whig lawyers of the time, a series of papers bitterly if not libelously attacking the government, and its supporters in the assembly. "Ballads" in ridicule of some members of the assembly and council were also issued. Regarded as derogatory to the dignity of his Majesty's government and tending to raise sedition and tumult, the council ordered certain numbers of the papers in which the obnoxious articles appeared, and also the ballads, "to be burnt by the common hangman." The assembly paid no attention to the council's request that it join in asking the governor to offer a reward for the authors of these seditious libels. On an order of the council, a warrant

<sup>1</sup> As matter of fact, *judges* in England had always been commissioned during the pleasure of the crown, until the passage, in 1702, of the "Act of Settlement" (12 and 13 W. III. c. 2), which provided that, after the termination of William's reign, the judges' commissions

should be during good behavior, and that they should be removable only on addresses of both Houses of Parliament. The permanence of their tenure, notwithstanding a demise of the crown, was further secured by 1 Geo. III., c. 23.



# THE New-York Weekly JOURNAL

*Containing the freshest Advices, Foreign, and Domestic.*

MUNDAY November 12, 1733.

Mr. Zenger.

Insert the following in your next,  
and you'll oblige your Friend,

CATO.

*Mira temporum felicitas ubi sentiri quæ  
velis, & quæ sentias dicere licet.*

TACIT.

**T**HE Liberty of the Press is a Subject of the greatest Importance, and in which every Individual is as much concern'd as he is in any other Part of Liberty: Therefore it will not be improper to communicate to the Publick the Sentiments of a late excellent Writer upon this Point. such is the Elegance and Perspicuity of his Writings, such the inimitable Force of his Reasoning, that it will be difficult to say any Thing new that he has not said, or not to say that much worse which he has said.

There are two Sorts of Monarchies, an absolute and a limited one. In the first, the Liberty of the Press can never be maintained, it is inconsistent with it; for what absolute Monarch would suffer any Subject to animadvert on his Actions, when it is in his Power to declare the Crime, and to nominate the Punishment? This would make it very dangerous to exercise such a Liberty. Besides the Object against which those Pens must be directed, is

their Sovereign, the sole supream Magistrate; for there being no Law in those Monarchies, but the Will of the Prince, it makes it necessary for his Ministers to consult his Pleasure, before any Thing can be undertaken: He is therefore properly chargeable with the Grievances of his Subjects, and what the Minister there acts being in Obedience to the Prince, he ought not to incur the Hatred of the People; for it would be hard to impute that to him for a Crime, which is the Fruit of his Allegiance, and for refusing which he might incur the Penalties of Treason. Besides, in an absolute Monarchy, the Will of the Prince being the Law, a Liberty of the Press to complain of Grievances would be complaining against the Law, and the Constitution, to which they have submitted, or have been obliged to submit; and therefore in one Sense, may be said to deserve Punishment. So that under an absolute Monarchy, I say, such a Liberty is inconsistent with the Constitution, having no proper Subject in Politics, on which it might be exercis'd, and if exercis'd would incur a certain Penalty.

But in a limited Monarchy, as England is, our Laws are known, fixed and established. They are the streight Rule and sure Guide to direct the King, the Ministers, and other his Subjects: And therefore an Offence against the Laws is such an Offence against the Constitution as ought to receive a proper adequate Punishment; the *leveres*,  
Constiti

for Zenger's arrest for seditious libel was issued, on which he was arrested. Brought before Chief-Justice De Lancey, on *habeas corpus*, his counsel, James Alexander and William Smith the elder, both leaders of the politico-presbyterian party, then in opposition to the government, objected to the legality of the warrant on which the prisoner had been committed, and asked for a discharge, or admission to bail. But the bail exacted was so excessive, in view of the affidavit of Zenger that he was not worth forty pounds, exclusive of his wearing apparel and tools of his trade, that he was remanded, though had he or his backers not been so willing to make him a martyr, bail in plenty would no doubt have been furnished by his political sympathizers. The grand jury, however, refused to find an indictment, whereupon Attorney-General Bradley on January 28, 1735, exhibited an information *ex-officio* against the prisoner, for "false, scandalous, malicious, and seditious libels," on which, in the following July, Zenger was brought up for trial. But his counsel, Alexander and Smith, had in the preceding April filed an exception to the information on the grounds (1) that the Supreme Court in which it had been filed was without qualified judges, their commissions running *during pleasure* instead of *during good behavior*; and (2) that their commissions, such as they were, had been granted by the governor (Cosby) on his own authority, without the advice and consent of the council, and were therefore void. This attack upon the very existence of the court was resented, with spirit, by the chief-justice, who addressing Smith, said: "You have brought it to that point, sir, that either we must go from the bench or you from the bar." Thereupon, without further argument, the names of both Smith and Alexander were ordered stricken from the roll, as for a gross contempt of court. Neither of them was permitted to resume practice until the next year when, upon the death of Governor Cosby, both were readmitted to the bar, and Alexander was recalled to his seat in the council.

The question of the judges' tenure of office *durante bene placito*, instead of *quamdiu bene se gesserint*, seems to have been accepted as settled, after the troubles attending Chief-Justice Pratt's induction into office in 1761. His successor, second-judge Horsmanden, the last of our colonial chief-justices, accepted a commission during pleasure, and died in office.

But a more serious question which had vexed the court, and given rise to the wildest expressions of popular feeling against it, under the lead of the whig lawyers, was whether the Supreme Court's constitution permitted it to exercise the equity powers of the English Court of Exchequer. The opposition to the judges sitting as barons of the exchequer, at chambers, to hear matters in equity, was based upon the old contention that no court could legally be erected here except by statute; that exchequer-chamber jurisdiction was not conferred by the act of 1691, or by any subsequent legislation, but was assumed

to be conferred by mere executive ordinance; and government by ordinance rather than by law was subversive of the cherished rights and privileges of the people, as English subjects. It was the same contention which had from time to time aroused violent opposition to the jurisdiction claimed by the governor and council, sitting as the Court of Chancery, under the crown's instructions to his governors. A better understanding of the controversies in the Supreme Court over the question of its equity jurisdiction, and of the prodigious excitement occasioned throughout the province by the trial of *Cosby against Van Dam* in 1733, will be had if a brief account of the Court of Chancery is first given.

#### COURT OF CHANCERY.

The distinction between what might be fitly done in a court of law and in a court of equity—so familiar in the administration of justice in England—was unknown wherever, as in New Netherland, the civil law prevailed. The need of having a separate tribunal to supply the defects of the common law, and to furnish remedies in classes of cases not provided by it, only began to be felt in New York when increase of wealth, through a growing commerce and speculation in land grants, with their attendant attempts to found families, which soon followed the English occupation, brought the art of conveyancing into greater use, and gave rise to controversies concerning trusts, their creation and execution, and other like subjects of equity jurisprudence which the existing courts of law were powerless to entertain. In a city so purely commercial as New York, controversies were likely to arise, involving the dissolution and winding up of partnerships, accountings between principal and agents, trustees and their beneficiaries, guardians and wards, which, if complicated, the machinery of the law courts was not suited to unravel, or was thought to be so.



Under the proprietary government of the Duke of York, his governors had assumed to act as chancellors, under the authority of the Duke's patent and his own instructions to them, but in 1683, when James yielded to the popular demand for a local legislature, a Court of Chancery was included in the judiciary scheme which was then adopted. It was to consist, as theretofore, of the governor and his council; the only effect of the act being to give legislative sanction to a jurisdiction which had hitherto been exercised under the communicated prerogative of the crown.

This sanction was saved from the general wreck of Dongan's legislation, by an act of the first assembly called under authority of the new king, passed May 6, 1691, which conferred jurisdiction in equity upon the governor in council, for a limited term of seven years only.





the assembly, on the eve of its being prorogued, on the 25th of November, 1725. These would furnish better evidence of the sincerity of popular hostility to the court, if we did not know the circumstances under which they were put through the house in the last hours of the session. It appears that Frederick Philipse, a great landholder, and a merchant, had been sued in the Supreme Court by the representative of his former partner, Codrington, then deceased, on a bond for £1,500, alleged to have been given by him to his partner, on the firm's dissolution, as the latter's share. Philipse interposed, by way of answer, some sort of equitable defence, perhaps a mistake in the accounting had by the partners themselves, with the object, it was asserted, of "removing the suit into chancery."<sup>1</sup> His plea being overruled, and judgment given against him on the bond, in the Supreme Court, he filed a bill in chancery to have the bond canceled, the account of the partnership opened and restated. The cause was carefully tried before Governor Burnet, but the plaintiff's evidence was not sufficient to convince the court that "a man of Mr. Philipse's sense and experience in business would give his bond for £1,500 to a man who owed him a greater sum at the same time," and his bill was dismissed. Philipse was at that time speaker of the assembly, and in resentment for his treatment by the Court of Chancery, he is said to have induced the assembly's committee on grievances to report to the assembly certain resolutions already drawn up by his own friends, which he, as speaker, put to an immediate vote and caused to be carried by the house. The assembly's minutes, under date of November 26, 1727, are worth giving in full, as follows:

Die Sabbat: 25th November 1727.

Coll. Hicks from the Committee of Greivances reported that, as well by the Complaints of several people as by the General Cry of his Majesty's Subjects Inhabiting this Colony, they find that the Court of Chancery as Lately assumed to be Sett up Here renders the Libertys and properties of the said Subjects extreamly Precarious, and that by the violent measures taken in & allowed by it some have been ruined, others obliged to abandon the Colony, and many restrained in it either by Imprisonment or by Excessive bail exacted from them not to depart even when no manner of suits depending ag't them and therefore are of opinion that the Extraordinary proceedings of that Court and Exorbitant fees and charges Countenanced to be Exacted by the Officers and Commissioners thereof are the greatest greivance and oppression this Colony has ever felt and that for removing the fatal consequences thereof they had come to several resolutions which being read were approved by the House and are as follows:

*Resolved*, That the Erecting or Exercising in this Colony a Court of Equity or Chancery (however it may be Termed) without Consent in General Assembly is unwarrantable and Contrary to the laws of England and a Manifest oppression and greivance to the subjects and pernicious Consequence to their Libertys and property.

*Resolved*, that this House will at their next meeting prepare and pass An Act to declare and adjudge all orders ordinances Devises and proceedings of the

<sup>1</sup> Colden's Letters, N. Y. Hist. So. pub. (1808), 213.



court so assumed to be Erected and Exercised as above mentioned to be Illegal Null and void as by Law and of right they ought to be.

*Resolved*, that this House will at the same time take into consideration whether it be necessary to Establish a Court of Equity or Chancery in this Colony in whom the Jurisdiction thereof ought to be vested and how far the powers of it shall be prescribed and Limited examined and Compared with the Journal of the General Assembly.

G: Ludlow Cl.

On the formal presentation of this minute to the governor and council, the latter forthwith made a minute that they looked upon the assembly's resolves "as unwarrantable and highly Injurious to his Majesty's Prerogative for the recovery of his just Rights in this Province and to the Libertys and propertys of the Subject, who would, if the said Resolutions were of any force, be thereby deprived of all remedies in Equity which they are entitled unto by the Laws and fundamental Constitution of Great Britain." They, in addition, entered an order directing that "this Minute be published and printed and dispersed throughout this Province And that the Gentlemen of this Board or any five of them be a Committee to make their observations on the said Resolves & that they may report their opinion thereon to this Board."

At a meeting of the council, August 30, 1728, the committee, of which Cadwalader Colden was chairman, made its report to the governor in council, in which, however, they content themselves with reflecting upon the motives, and the irregular manner of passing the resolutions rather than answering the alleged grievances, and wishing the assembly's resolves might never affect "the propertys & Libertys of the people more than any Act of Council." It is declared, however, "that unless such attempts as this be Effectually discouraged, The Authority of his Magestys Courts may often be in danger from the Artifices of popular men That Judges may be frightened even in Cases where the King is highly concerned from giving Judgment against a Leading man of An Assembly and that the poor may have no means Left of Defending or receiving their right when Invaded by rich & powerful men. If such an open Invasion of the Kings prerogative should now be passed with neglect, any Discourse of it for the future may become the Test of the people." Finally, "we must Zealously Endeavor to discourage all attempts on the Royal prerogative & the Safety of the people in their properties & Liberties from whatever hands they come. The prerogative of the Crown is so closely interwoven with the Safety of the people that no Attempt can be made upon one without manifest Injury to the other."

Attacks, however, continued to be made upon the governor's exercise of equitable jurisdiction under the royal prerogative. In 1735, on Governor Cosby's refusal to dismiss a bill filed by Sir Joseph Eyles and others to vacate a certain patent of land, on a plea being interposed to his jurisdiction, the defendants made their grievance

known to the assembly, with the result that a resolution was adopted November 6, 1735, "That a Court of Chancery, in this province in the hands, or under the exercise, of the governor, without consent in general assembly, is contrary to law, unwarrantable, and of dangerous consequence to the liberties & properties of the people." When in 1737 the assembly passed a bill "for establishing & Regulating Courts to Determine Causes of Forty shillings & under," it made bold, on sending it to the governor and council, for approval, to again call attention, in temperate language, to the general desire of having all courts of general jurisdiction established, and their several jurisdictions and powers appointed and limited, by the legislature, and not left any longer to the uncertain exercise of prerogative power. They pointed



BROOKLYN FERRY.

out that it had been the constant practice in England for Parliament to erect new courts, and to abolish or alter old ones, and no king ever conceived that thereby his just and legal prerogative was in the least diminished; and here, in New York, the legislature of 1691, at the instance of Governor Sloughter, had erected courts, and subsequent governors had consented to similar legislation, but none of them ever imagined he was giving up the prerogative of his master in assenting thereto, and it was never learned that they were censured for doing so. What they complained of was, that the governor "never would apply for an act establishing a court for the determination of small causes," but that court had been erected by executive order in council, as the Court of Chancery had also been, notwithstanding its original creation by act of the legislature, "in another manner." An

appeal is then made for the approval of the bill for the court for small causes therewith submitted, but, in view of the notorious dissatisfaction which a court of chancery erected by ordinance and not by statute had given the generality of the people, as manifested by repeated resolves of the general assembly, and as often as made contemptuously disregarded by successive governors, the hope is expressed that the long contention between the governor and the assembly on the subject might be ended by establishing a court of chancery, and other courts, by act of the legislature—a course which, being indisputably legal, could not be destructive of his Majesty's prerogative. It was broadly hinted that even a court created by statute would not be satisfactory to the people if it was to be composed, as heretofore, of the governor and council, for the history of the court, as they had managed it, had proved the court "of no use to the publick or benefit to the governors; few of them had talents equal to the task of a chancellor which they had undertaken to perform, so it was executed accordingly; some of them being willing to hold such a court, others not, according as they happened to be influenced by those about them; so that were it really established in the most legal manner (as it was not) yet being in the hands of a person not compellable to do his duty, it was so managed that the extraordinary delays and fruitless expense attending it rendered it not only useless, but a grievance to the inhabitants, especially those who were so unfortunate as to be concerned in it; which, we hope you think with us, it is high time should be redressed."<sup>1</sup> The governor and council, thus addressed, evidently did not think with the assembly on the subject of a statutory court of chancery, although the bill for the court for small causes, after amendment, was finally assented to. To his notice of this address given by Smith, writing in 1757, the writer adds that "from this time the chancery was unattacked by the assembly, but the business transacted in it is very inconsiderable." In his opinion, however, "a court of equity is absolutely necessary for the due administration of justice," though few, he thinks, "will be ambitious of the chancellor's office, as they have not the assistance of a master of the rolls."<sup>2</sup>

#### EXCHEQUER JURISDICTION.

It will be noticed that the hostility of the popular party to the assumed chancery jurisdiction of the governor and council was due to the crown's denial of the exclusive right of the assembly to erect its own courts and fix the limits of their jurisdiction, though any court exempted from the rules of common-law procedure, as courts of equity were supposed to be, was always and everywhere in the American colonies regarded with distrust. It is not surprising, therefore, that

<sup>1</sup> Smith, *Hist. of N. Y.*, ed. of 1814, 386.

<sup>2</sup> When Smith's *History* was published Lieutenant-Governor Colden saw many things in it to criticise, and

alleged misstatements of fact to correct, which he proceeded to do in a series of letters to his son only recently published. *N. Y. Hist. So. fund pub.* (1899).

every attempt of the Supreme Court to exercise equity powers, though made under the guise of exchequer business, should excite an instant and persistent opposition on the part of the whig bar, than which nothing was surer to receive popular applause.

The first exchequer-chamber business attempted in the Supreme Court was made by Chief-Justice Attwood shortly after his arrival here in 1701, Lord Bellomont being governor. The latter had come out under special instructions to suppress the illicit trade, not to say piracy, at that time largely engaged in by the merchants and traders of New York. To assist him in this arduous task, a new chief-justice (Attwood) and an attorney-general (Sampson Shelton Broughton) had been respectively commissioned directly by the king—no resident being trusted in this emergency—to assist in stamping out the evil. The seat of corruption seems to have been in the Court of Admiralty. Attwood was accordingly armed with a commission as Judge of Admiralty for New England, New York, and New Jersey, in addition to the chief-justiceship of New York. On his arrival, in the summer of 1701, he learned of the case of a vessel which, seized for lack of registry under the navigation acts, had been discharged by the admiralty judge whom he succeeded. What was wanted was some jurisdiction somewhere to prohibit, by writ, the execution of the decree discharging the vessel until the admiralty proceedings could be reviewed. But there was no court in the province having an unquestioned right to issue a writ of prohibition against the decree of the Admiralty Court. The chancery jurisdiction of the governor was questioned; the Supreme Court was claimed by the lawyers to be a court of law only. He concluded, however, that, by its constitution, as gathered from the original act of 1691, and the subsequent ordinances continuing the court, the Supreme Court, sitting as a Court of Exchequer, had power, by writ of prohibition, to prevent the discharge of the vessel and the consequent defeat of his Majesty's forfeitures, under the navigation acts, pending an inquiry by it into the legality of the vessel's discharge. He thereupon, assuming to sit as a baron of the exchequer, directed "a suggestion to be exhibited to it for a prohibition to the Court of Admiralty upon its sentence in that matter." But as "one of the persons designed for a judge in the Supreme Court had given the obnoxious sentence in favor of the ship," and the other "was a merchant who might be concerned in interest, the Governor thought fit to suspend the granting their Commissions till this matter should be over in the Supreme Court, and therefore," he writes, "the enclosed Ordinance was made empowering me alone to determine this matter." In justification of his assumption of this extraordinary jurisdiction, Attwood assures the Board of Trade that the matter "had been solemnly argued by Council on both sides," that he had taken due time to compare the authorities cited to him, and to collect others which are produced at large in his "long argument" (enclosed), given on his granting the



writ of prohibition.<sup>1</sup> Notwithstanding a prompt appeal directly to the king by the vessel's owners, "men of good estates," as he had reported, he proceeded to try the crown's claim to a forfeiture. The captain refused to appear, though "his former attorney offered several things, as *amicus curiæ*, principally the pendency of the appeal." On the facts found a forfeiture was declared, under which the vessel was sold at public auction, to the consternation, we may suppose, of the "men of good estates" engaged in the prevailing illicit trade.

It is not certain that Attwood's exercise of equity jurisdiction in this instance was followed as a precedent by any of his successors, until the case of Governor Cosby against Rip Van Dam arose in 1733, when Lewis Morris was chief-justice, with De Lancey and Philipse associate-judges.

The suit was brought, shortly after his arrival, by Governor Cosby, who had been appointed to succeed Governor Montgomerie, who had died here in July, 1731, and on whose death Rip Van Dam, as senior member of the council, became acting governor. Van Dam had taken to his own use the whole of the governor's allowance by way of salary, for the period intervening between Governor Montgomerie's death and the arrival of his successor, about a year. The new governor claimed that by the terms of the king's order in council, made May



RIP VAN DAM.

31, 1732, soon after his appointment, one-half the governor's salary for the period in question had been granted to him. On Van Dam's refusal to recognize the new governor's demand on him to turn over any portion of the salary he had appropriated, a suit was instituted by Cosby in the Supreme Court for an accounting instead of an ordinary action on the case upon an *indebitatus assumpsit* at common law. The suit could not, with decency, be brought in the Court of Chancery, so-called, of which the plaintiff, being governor, was *ex-officio* chancellor. To give some warrant of authority for the chief-justice's theory of the Supreme Court's equity jurisdiction, the governor promulgated an ordinance (December 4,

1732) enabling its judges to sit as the Court of Exchequer. Van Dam, a city merchant, was closely allied with the so-called presbyterian or whig faction; his counsel were James Alexander and William Smith, the idols of that faction, and public feeling over the case was wrought up to a state of excitement quite inexplicable to later generations.

<sup>1</sup> Attwood to Board of Trade, October 20, 1701, N. Y. Col. Docs., iv., 924.



The contention of counsel before Attwood in 1701 was now renewed in 1733 in the Van Dam case, to wit: that to erect a Court of Exchequer or any other court, or to extend an existing court's jurisdiction, without an act of the assembly, was an act of arbitrary power; that no court of equity, or of any other jurisdiction, could be legally established except by prescription or an act of the legislature; that arbitrary power, though "let in but at a back door," was a menace to every possession a man could call his own—all would be "at the will and disposal of his tyrannical owner." So great was the popular interest in the trial from day to day that, as we are told, "the Exchequer Court bell scarce ever rung, but the city was all in confusion." The court having sustained its exchequer jurisdiction in equity, by the votes of De Lancey and Philipse, second and third judges, as against Morris, C.J., dissenting,<sup>1</sup> the tumult arose to greater heights. The assumed power of the governor to erect a new court by an executive ordinance was made what would now be called an "issue" in the next election of representatives in the assembly. The ex-chief-justice, who had been turned out of office by the governor, procured his election as representative of Westchester county, and at once assumed the opposition leadership in the new assembly convening in the spring of 1734. Petitions "from several parts of the province" were addressed to the assembly in which the signers, asserting themselves "to be entitled to the liberties of Englishmen," protested that any court, and "especially the Court of Equity lately erected in the Supreme Court of this Province," was "a grievance and destructive to the liberties of the people, as it is now constituted"; that is, by executive ordinance instead of legislative act. The assembly decided to hear counsel on the subject, and accordingly William Smith, who had appeared for Van Dam in Cosby's case, and Joseph Murray, the recognized leader of the bar and in sympathy with the theory of prerogative government, were heard at length in the presence of a great audience. Their arguments—which the assembly subsequently ordered to be printed and distributed—are worthy of a fuller notice than can be given here. The debated issue was, at bottom, the same that arose forty odd years later between the United Colonies and the British Parliament, and it may well be doubted whether the American doctrine of home rule, which found its ultimate expression in the Declaration of 1776, ever had fuller or clearer utterance than it had in the New York Assembly in 1734. The effect was a popular veto upon any crown-made courts in New York, for, after Cosby *against* Van Dam, we hear no more of the Supreme Court's equity jurisdiction. About nine years later, in 1742, "an act for regulating the payment of quit-rents" gave the Supreme Court jurisdiction for their recovery, thus establishing, in effect, if not in name, an ex-

<sup>1</sup> His opinion was printed in a folio tract of 13 pp., entitled: "The Opinion and Argument of the Chief-Justice of New York concerning the Jurisdiction of the Supreme Court of the said province to determine

Causes in the Court of Equity. In a letter addressed by Lewis Morris to Governor Cosby, New York: Printed and sold by J. P. Zenger, 1733."

chequer branch of the Supreme Court. This jurisdiction, inherited by the Supreme Court of the state, was not taken away until December, 1828. It is not doubted that in cases at law, where the examination of a long account was involved, the Supreme Court never declined jurisdiction for that reason, but exercised the exchequer-chamber power of ordering a reference to an examiner or referee to try the cause.

#### DIVORCE AND PROBATE JURISDICTION.

For more than one hundred years before the adoption of the first constitution of the state, and for many years thereafter, judicial dissolution of marriage was unknown. It was not until 1787 that the legislature of the state authorized the then newly erected Court of Chancery, on a bill filed, to pronounce divorces *a vinculo*, and then only in cases of adultery. Before that, a special act of the legislature was the only means of effecting a divorce.<sup>1</sup> There is reason for believing that in the first period of the English colonial period before the Revolution of 1688, judicial divorces by the decree of the governor were not unknown. Thus, Governor Lovelace in 1671 entertained an application for a divorce, on the ground of the wife's adultery, which he could only have done, if he cared to act legally, on the theory that the Dutch-Roman law allowing judicial divorces had survived the conquest, and not being repugnant to English law was the then law of the colony.<sup>2</sup> The lack of such a beneficent jurisdiction appears to have been deplored in New York, and parties wanting divorces were compelled to resort to the New England courts. Lieutenant-Governor Colden, writing in 1759, says that the power to grant divorces which the early governors of the province had taken on themselves had been disused since the Revolution of 1688, and there was no court which could give this remedy, "though in neighboring colonies a divorce is more easily obtained than perhaps in any other Christian country." He then adds: "Query whether this may not be for the advantage of a new country which wants people. It is certain that the natural increase of people in New England has been very great, perhaps more than in any other of the English Colonies."<sup>3</sup>

Jurisdiction of probates and the administration of decedents' estates prior to Dongan's time (1686) was exercised by the Court of Sessions in each of the three ridings into which the province was divided, the court consisting of the justices of the peace within the riding. In the city of New York, however, the Mayor's Court exercised this jurisdiction. In all cases of estates exceeding £100 in value, their proceedings upon a probate or administration on intestacy were certified and returned to the provincial secretary's office where they were recorded. All letters testamentary or of administration, as the case might require, were issued by the governor under the great seal, as well as

<sup>1</sup> Kent, Comm., II., 97.

<sup>2</sup> Dunlap's Hist., I., App.

<sup>3</sup> Colden's Letters, N. Y. Hist. So. pub. (1868), 187.

final decrees in cases of accounting by personal representatives. In one case, at least, Governor Andros granted letters on his own authority, without any proceedings in court. By the instructions which Governor Dongan brought out in 1686, he was directed, among other things, to see that the ecclesiastical jurisdiction of the Archbishop of Canterbury should take place in the province, "as farr as conveniently may bee," except the collating of benefices, the granting of marriage licenses, and the probate of wills, which were reserved to the governor; and in a similar letter of instructions to Sloughter, in 1689, the ecclesiastical jurisdiction of the Bishop of London was added.<sup>1</sup> Until the passage of an act by King William's first assembly in 1692, the governor or his secretary appear, by the extant records, to have taken proof of wills and made inventories and appraisements of estates, settled accounts, and granted discharges, in the first instance, though the courts of sessions and the Mayor's Court continued to exercise their powers, in this regard, as theretofore. By the act above referred to,<sup>2</sup> the governor, or his delegate, was authorized to probate wills, and to grant administration in cases of intestacy, under the prerogative seal. In cases arising in counties other than New York, Orange, Richmond, Westchester, and Kings (wills in which were to be proved in New York City), the proceedings and proof might be taken in the county Courts of Common Pleas, and certified to the secretary's office in New York, where the probate and letters testamentary or of administration, as the case might be, were issued. Where, however, the estate was under £50, the Common Pleas might grant probate and issue letters, subject to an appeal to the governor by an aggrieved party. In fact, the governor exercised the powers of the ordinary or bishop in the ecclesiastical courts of England, and the provincial secretary that of registrar.



OLD COURT-HOUSE, POUGHKEEPSIE.

The requirement of the act, that wills in the counties of Orange, Richmond, Westchester, and Kings, should be proved in New York, was found to be so onerous, after some years, that the governor commissioned delegates to act for him in all these counties. In New York county, the deputy-secretary was usually named by the governor as his delegate. Doctor Bridges, afterward appointed chief-justice, was so named by Cornbury in 1792, and it was he who first introduced the title of surrogate, by adding it to his signature of official documents. After 1746, or thereabouts, the local delegates in the several counties, other than New York, began to be called surrogates, and were so

<sup>1</sup> N. Y. Col. Docs., iii. 372, *et seq.*

<sup>2</sup> Smith and Livingston's Laws, 15.

named in their commissions. The business thus done in the name of the governor, but in fact by his delegate or surrogate, came to be known as that of the prerogative office or Prerogative Court, which had its own seal. The delegate was a specially commissioned officer, and he was authorized in making decrees in matters of probate and administration to "affix the prerogative seal of the province, without any further fiat or allowance."<sup>1</sup>

### THE COURT OF OYER AND TERMINER.

Dongan's abortive legislation of 1683 had provided a Court of Oyer and Terminer composed of one judge, assisted by four justices of the peace of the county, all specially commissioned for the purpose. Under the judicial organization adopted in 1691, a "Court of Oyer and Terminer and General Gaol Delivery" was to be held in each circuit, composed of one of the Supreme Court judges assigned to the circuit and specially commissioned by the governor, and some of the county judges within the circuit. In the city, the mayor and four aldermen sat with the circuit judge. The ancient name of Oyer and Terminer continued to designate the criminal circuit or branch of the Supreme Court, until the new judiciary provisions of the present constitution went into effect on January 1, 1896. When on a circuit the sheriff of the county met the judge and his attendants upon his entrance into the county town and conducted him to his lodging, which, according to the etiquette of the time, was not to be the same as that occupied by the lawyers. Toward the end of the colonial period the judges began to sit in gown and bands, though the bar never donned any distinctive habit.

Prosecutions by information, by order of the governor and council, instead of by indictment by a grand jury, were not uncommon. Commitments under warrants issued by the council, of which the judge who might try the prisoner was perhaps a member, gave rise to some complaint and became the occasion of scandal. Warrants were even issued, as in Zenger's case, where the grand jury had refused to bring in an indictment. It was in its criminal branch that the Supreme Court has left a tarnished record. Leisler's trial in April, 1691, at a special Oyer and Terminer, composed of Dudley, Smith, and Philipse, who were immediately after the trial commissioned judges of the newly erected Supreme Court, is mentioned by all our local historians. The hanging of Leisler and Milborne, who had been convicted and sentenced, though refusing to plead and standing dumb through the trial, caused, under the circumstances, a great revulsion of public feeling against the new court and its judges. Whatever we may think of the regularity of the trial and the justness of the verdict, probably no pub-

<sup>1</sup> Any further account of the prerogative jurisdiction in the province would be altogether superfluous in view of the very full account which Judge Daly of the

Common Pleas, sitting as surrogate, had occasion to give in deciding *Matter of Brick*, 15 Abb. Pr. 12.



lie event in our colonial history exerted a deeper or more enduring influence on the social and political life of the province throughout its subsequent history than this "barbarous murder" and "revengeful sacrifice," as it was variously characterized. For many years the public men of New York were known as Leislerians or anti-Leislerians. It was not long after Leisler's execution that his sympathizers had their revenge upon his prosecutors, the chief of whom was Nicholas Bayard. At the time of Attwood's appointment as chief-justice, Leisler's attainder had been reversed by act of Parliament, in effecting which the Earl of Bellomont, before he came out as governor, had taken an active part. On his arrival here in 1700 he, as well as Lieutenant-Governor Nanfan, were friendly to the so-called Leislerian faction. On the death of Bellomont, Nanfan, Thomas Weaver, the collector of the port, and Chief-Justice Attwood were in full control. They caused a warrant to be issued by the council for the arrest of Nicholas Bayard, Rip Van Dam, Philip French, and Thomas Wenman on a charge of high treason, in that they (all anti-Leislerians) had signed addresses to the king, the House of Commons, and to Lord Cornbury, news of whose appointment as governor had reached the city, charging their opponents then in power with all manner of malfeasance in office, with the connivance and support of Lieutenant-Governor Nanfan. Alderman Hutchins, in whose



LEISLER'S HOUSE.

tavern the addresses were signed, had been committed by Nanfan for refusing to disclose the signers' names. Attorney-General Broughton had given an opinion on the lieutenant-governor's application, to the effect that there was nothing criminal in the addresses, and that Hutchins' refusal to give up the names was not a criminal contempt justifying his commitment. But the grand jury having been induced to bring in an indictment, Attorney-General Broughton was suspended (being commissioned by the crown, he could not be removed) and Weaver was appointed to conduct the prosecution before a specially commissioned Oyer and Terminer, composed of the chief-justice, Attwood, and De Peyster and Walters, second and third judges, respectively. De Peyster had been one of Leisler's captains, and the resentment of both of the puisne judges toward Bayard for his activity in instigating Leisler's prosecu-



tion and subsequent execution was well known. Bayard was tried and convicted of treason under an act of 1691, of which he himself and the anti-Leislerians were the authors, which made it treason for a person to endeavor by force of arms *or otherwise* to disturb the peace, good, and quiet of the king's government; and Bayard's promotion of the addresses to the House of Commons, which then had nothing to do with the government of New York, more than with the government of France or Canada, was held to come within the terms of this act. A full and presumably fair contemporary report of the trial, with the arguments of William Nicoll and James Emott, both able and fearless lawyers, who appeared for the accused, have come down to us. A general verdict of guilty having been returned by the jury, and a motion in arrest of judgment having been denied, the horrible sentence of the English law for the crime of treason was pronounced, which, as those familiar with our history will remember, was subsequently annulled by Queen Anne. This celebrated trial is noticeable as showing that at this early day, and a century and more before the privilege was accorded in England, a prisoner, on a trial for felony, was allowed the

assistance of counsel.

It ought to be added that in the court's conduct of the trial there was not such a scandalous departure from the models then furnished at Westminster



Hall as has been alleged. No sympathy need be spent on Nicholas Bayard, the leader of a blood-thirsty faction, who was only rescued from the pit he himself had dug by the timidity or charity of his prosecutors. His conviction was had, no doubt, through a strained construction of the letter of an obsolete law, but the report of the proceedings on the trial does not disclose on the part of the court any such gross violation of the ordinary rules of criminal procedure or perversion of criminal justice, as then understood, as to call for the severe judgment which some of our historians have ventured to pronounce.<sup>1</sup>

Another and more widely known trial in the criminal branch of the Supreme Court was that of Zenger, the printer of the *New York Weekly Journal*, for seditious libel in 1735. The preliminary proceedings, in which Alexander and Smith, the prisoner's counsel, were summarily disbarred for calling in question the validity of the judge's commissions, have already been mentioned. The trial itself is worthy of notice here because its influence on the constitutional development of the province was marked and permanent. That the argument of Zenger's counsel in favor of a jury's right to find a general verdict in libel cases was known

<sup>1</sup> Ex-Chief-Justice Charles P. Daly's articles in the *Green Bag* for March, April, and May, 1895, furnish, as

might be expected, an interesting account of Attwood's career and of Bayard's trial.

in England and was availed of in the defence of the great number of persons who, during the next fifty odd years, especially during the early years of George III., were tried in the King's Bench for seditious libel, cannot well be doubted.<sup>1</sup> The most remarkable of these English cases was the information against John Horne Tooke in 1777 for a seditious libel in encouraging the American revolt; that against Dean Shipley, a brother-in-law of Sir William Jones, in 1783, for causing to be reprinted, and recommending, the latter's tract in favor of Parliamentary reform; and that against Thomas Paine in 1792 for libelling the king in "The Rights of Man." On these trials Lord Erskine, then at the bar, made those matchless appeals in behalf of the right of a jury in a libel case to give a general verdict of guilty or not guilty, which led to the passage of Fox's Libel Act in 1792, by which such verdicts were allowed and judges were forbidden to direct a verdict of guilty on proof of publication and of the sense ascribed to it by the prosecution.<sup>2</sup> This right of juries in libel cases, thus secured by statute in England, had been claimed as a common-law right in New York over fifty years before in Zenger's case, and the verdict there of not guilty had established the law of New York in favor of freedom of the press for all time.

After the exceptions to the information had been overruled, and Zenger had been deprived of the assistance of his counsel (Alexander and Smith), John Chambers, a former puisne judge of the court, was assigned in their place, and on a plea of not guilty, a struck jury was obtained. The leading counsel for the accused, on the trial, was Andrew Hamilton, of Philadelphia. His line of defence was, after admitting the publication, that the matters charged as *false, scandalous*, etc., were true in fact, and, therefore, no libel. Hamilton's address to the jury was a really eloquent, forcible, and courageous effort, and would do credit to any bar in any period of American or English history. Chambers was, if less eloquent, equally effective with the jury, denouncing the authorities cited by Bradley, the attorney-general, as those of the terrible Star Chamber, and claiming that, under English law, it was no libel for men suffering under a bad administration of government to make public their just complaints. He denounced government by prerogative in the colonies, and claimed for the freeholder of New York the rights enjoyed by the freeholders of England. The jury, though all attempts to prove the truth of the publications had been overruled, and notwithstanding De Lancey's strong charge that the truth of the libel was outside their province to determine, and that they were judges of the fact only and not the law, returned a verdict, almost at once, of not guilty, which instantly threw the

<sup>1</sup> Zenger's case was published in Howell's *State Trials*, xvii. 675. A report of the trial was published in Boston which is thought to have been prepared by one or more of Zenger's counsel.

<sup>2</sup> But it was not until fifty years after the libel act of

1792 that Lord Campbell's Libel Act of 1845 permitted the truth to be given in evidence, and thus forever extirpated the maxim, "the greater the truth the greater the libel." 32 George III. c. 60.

crowded court-room into an uproar of noisy applause, to the consternation and indignation of the judges, De Lancey and Philipse. After lying in jail for eight months, Zenger was released and resumed the publication of his paper. For his "learned and generous defence of the rights of mankind and the liberty of the press," the common council next day presented Hamilton with the freedom of the city in a gold box, with their thanks, and a grand ball was given in his honor on the

A  
JOURNAL  
OF THE  
PROCEEDINGS  
IN

The Detection of the Conspiracy

FORMED BY

Some *White* People in Conjunction with *Negro* and other *Slaves*,

FOR

Burning the City of *NEW-YORK* in AMERICA,

And Murdering the Inhabitants.

Which Conspiracy was partly put in Execution, by Burning His Majesty's House in Fort GEORGE, within the said City, on Wednesday the Eighteenth of *March*, 1741 and setting Fire to several Dwelling and other Houses there, within a few Days succeeding. And by another Attempt made in Prosecution of the same infernal Scheme, by putting Fire between two other Dwelling-Houses within the said City, on the Fifteenth Day of *February*, 1742; which was accidentally and timely discovered and extinguished.

CONTAINING,

A NARRATIVE of the Trials, Condemnations, Executions, and Behaviour of the several Criminals, at the Gallows and Stake, with their *Speeches* and *Confessions*; with Notes, Observations and Reflections occasionally interspersed throughout the Whole

AN APPENDIX, wherein is set forth some additional Evidence concerning the said Conspiracy and Conspirators, which has come to Light since their Trials and Executions.

I. LISTS of the several Persons (Whites and Blacks) committed on Account of the Conspiracy; and of the several Criminals executed, and of those transported with the Places whereto.

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*By the Recorder of the City of NEW YORK.*

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*Quid facient Domini, audent cum talia Fures?* Virg. Ecl.

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NEW-YORK

Printed by *James Parker* at the New Printing-Office, 1744

same evening; and next day, on his way to the barge which was to carry him to Philadelphia, he was escorted with great ostentation, and, on sailing, received a parting salute of cannon and multitudinous huzzas.<sup>1</sup>

There are few incidents in our judicial annals which the annalist more regrets to record than the conduct of the trial of the alleged conspirators engaged in the so-called negro plot in 1741, Chief-Justice Horsmanden presiding. The exculpatory volume published by him, in 1744, concerning what he calls "the Conspiracy Formed by Some White People, in Conjunction with Negro and other Slaves, for Burning the City of New York, and Murdering the Inhabitants," failed to convince his own, much less any succeeding, generation of anything other than a plot of petty thieves to create by incendiary fires a state of public alarm to facilitate pillage. The ready acceptance by the public of the theory that an alleged Catholic priest, at the instigation of the King of Spain, with whom England was then at war, was at the bottom of the plot, was a disgraceful surrender to the bigotry of a past century. The senseless panic, amounting to madness, into which the people, from the highest to the lowest, were thrown, is inexplicable when the contemptible origin of the tragedy, and the inconclusive and even absurd testimony of an ignorant, half-witted, or else wickedly cunning girl of fifteen years, on which a grand jury of the leading citizens of the city brought in an indictment, are considered. But the most disgraceful feature of the craze was the conduct of the bar—then composed of such men of talent and high character as Joseph Murray, James Alexander, William Smith, Jr., John Chambers, David Jamison, and Lodge, who, by general agreement, refused to step forward in defence of any one of the trembling slaves, and not less wretched whites, over one hundred and fifty all told, who were implicated, and foredoomed. The trial court and the attorney-general (Bradley) were aided by the whole bar; and judge and lawyers were applauded and egged on by the most enlightened and influential citizens of the town. In the course of three months, more than one hundred and forty negroes—four of them women—were locked up; over one hundred were convicted of the conspiracy as charged, twelve of whom were burnt alive at the stake, eighteen hanged, and seventy-two—some of whom were probably freemen—transported to be sold as slaves in foreign countries. Twenty whites were committed, of whom only two were executed. Not one of them had the benefit of counsel, and whenever the master of an implicated slave ventured to furnish proof by way of defence, such as an alibi, good character, or other circumstance, his testimony was wholly disregarded. "For its disregard of all rules of legal evidence, for its prostitutions of the forms of law, for the perpetration of cruelty, for popular credulity and cowardice, for the abnega-

<sup>1</sup> The observation of Gouverneur Morris, made long afterward, that "Zenger's trial in 1735 was the germ of American freedom," has been often quoted.

tion of all sense of mercy, for the oppression of the weakest and most defenceless, the whole transaction was without precedent, and has no parallel in any civilized community."<sup>1</sup> Allowing, however, for the terrors of an anticipated insurrection, from which a slave-holding community must always suffer, the Negro-plot trials in New York cannot be said to have exceeded, if they equaled, the atrocity which characterized the "Popish-plot" judicial murders in England in 1679, which Lord Campbell declares to be "more disgraceful to England than the massacre of St. Bartholomew's to France," under the presiding genius of Chief-Justice Scroggs, of loathsome memory.<sup>2</sup>

Chief-Justice Horsmanden appears in better guise in the courageous stand he and his associate judges took in 1764, against the government, in the matter of appeals in civil causes, which involved the gray-



THE GOVERNMENT HOUSE.

est constitutional question—to wit, whether the king, in requiring, by his instructions to the governor, the allowance of an appeal to the latter and his council from civil judgments of the Supreme Court, was not exceeding the constitutional limits of his power, it being conceded that such an interference with judicial procedure *in England* was beyond his power. Why not equally out of his power in an English colony? Before the promulgation of this new instruction of George III., a Supreme Court judgment, in a civil action, could be reviewed by the governor and council by writ of error only, on which only errors of law were assignable, the evidence not appearing on the record; whereas an appeal, as was now directed to be allowed, would bring up the whole record, including the evidence on which the verdict was found—having the effect, it was claimed, of enabling a defeated party, if rich or powerful enough to appeal, to defeat the verdict of a jury. In the case of *Force vs. Cunningham*, a verdict having gone against

<sup>1</sup> Bryant and Gay's "Popular History of the United States," iii., 234. For many interesting details of the trial, not possible to be given here, the reader may be

referred to Mr. Gay's account, the best the writer knows of. See also Valentine's Manual for 1870, p. 764.

<sup>2</sup> Campbell's "Lives of the Chief-Justices," ii., 259.



defendant, at the fall term of 1764, the latter, by his attorney in fact—he being a non-resident—petitioned the governor and council for permission to appeal, which the governor, Colden, granted, notwithstanding strong opposition on the part of Horsmanden and other members of the council. He called on the attorney general, John Tabor Kempe, to assist in drafting the writ, as none of the appellant's attorneys or counsel, and indeed no lawyer in the town, would appear for the appellant, or would advise the governor. But the governor, though not a lawyer, as he said, with the help of the appellant's representative, drafted "a writ of Inhibition," addressed to all the officers of the Supreme Court, staying all proceedings on the judgment, and a day or two afterward sealed another writ, which directed the chief justice to bring up the proceedings to the governor and council. A great outcry, or "popular clamour," as Colden calls it, immediately arose, but, to the satisfaction of "the republican faction," the chief-justice—Smith and Livingston, J.J., sitting with him—flatly refused to obey the writ, or to recognize the stay of proceedings, and this in such an offensive manner as to furnish the lieutenant-governor another opportunity to inveigh against the lawyers and judges, who, he said, appeared resolved to make the court the ultimate resort of justice, and thus increase their already enormous influence in the province. Of the few people in the province, "almost universally ignorant," who had a liberal education, most of them, he said, were lawyers, whose opposition to the scheme of appeals—based as it was on the absurd idea that as the king could not establish courts or regulate their procedure in England, he could not do so here—would, if it should prevail, be "subversive of every government in the colonies, where all of them depend upon the king's charter, or on his commission to his governor," not only for their executive, but their judicial powers. He complains that the judges, instead of "giving the reasons of their judgments in private and simply, as I had expected, surprised me by harranguing to a large audience to make his Majesty's Instructions appear illegal and arbitrary, and to render his Governor odious in the eyes of the people." He says he at first thought the chief-justice had gone further than either of the other judges was willing to follow him; "but to what length Justice Livingston has gone will best appear from his harrangue which he industriously intruded on the last day of the hearing without being desired to speak on this occasion."<sup>1</sup>

The governor's report to the privy council of the judges' contumacious conduct brought back the peremptory order of the king in council, commanding them to send up the proceedings, but they refused to comply with another writ which the governor sealed.<sup>2</sup> Thus ended

<sup>1</sup> N. Y. Col. Docs., vii., 676, 681, 695. These "harrangues" were printed and eagerly read. "The grand Engine," the governor wrote, "by which the Judges and Lawyers endeavor to inflame the minds of the people, easily misled by sounds, is by boldly suggesting

that our Constitution is to be altered by the King's 32nd. instruction and trial by Juries taken away." *Ibid.*, 699.

<sup>2</sup> Letter of Judge Livingston to his father; Hunt's "Life of Edward Livingston," 27.

the first and last appeal under George the Third's 32d "Instruction."

The last circuit of the Supreme Court was held by Judge Thomas Jones at White Plains in April, 1776. He tells us in his History that one of the reasons for his being subsequently attainted was that, at this circuit, he discharged from custody several persons arrested as loyalists by the Westchester county committee. The last court for Tryon county had been held at Johnstown in the month of October, 1775.

#### CLOSING OF CIVIL COURTS BY GENERAL HOWE.

Unlike General Washington, who, during his occupation of the city, interfered in no way with the local magistrates in the exercise of their functions, the British general on his entry in September, 1776, shut up the civil courts, and everywhere within the British lines—that is, on Long Island, Staten Island, Manhattan Island, and in a good part of Westchester—the inhabitants, as well the loyal as the disloyal, were given over to a plundering soldiery. For want of civil magistrates, or by the indifference or connivance of military commanders, the thieves went unpunished and the stolen property was irrecoverable.<sup>1</sup> In such a state of distress upward of a thousand reputable persons within the British lines signed a petition addressed to Lord Howe (October 16, 1776), praying that he would "Restore this City & County to his Majesty's Protection and Peace"—in other words, would re-establish civil power in the place of military rule. Among the signers were Chief-Justice Horsmanden, Justices Ludlow and Hicks—Judge Jones being then upon his parol at Fort Neck,—and such leading lawyers as Samuel Jones, John Tabor Kempe, and Benjamin Kissam, all of the episcopal and some of the other clergy, and several merchants of high standing. The chief-justice wrote a personal letter to Governor Tryon asking him to present the petition. No answer to the petition was ever received from General Howe. In parts of the province outside the British lines no attempt was made either by the provincial congress or by the state convention to remedy the inconvenience occasioned by a lack of courts of justice. As the authority of the royal government declined, disorders, of course, increased. Those of the local judges and other civil officers who were loyalists were odious to the great body of the people, who regarded with contempt or open defiance their attempts to execute the duties of their office. Those known to be in sympathy with the popular movement were generally recognized and obeyed. The old forms of process for the recovery of debts and the punishment of crimes were continued. Some of the counties endeavored to remedy the inconven-

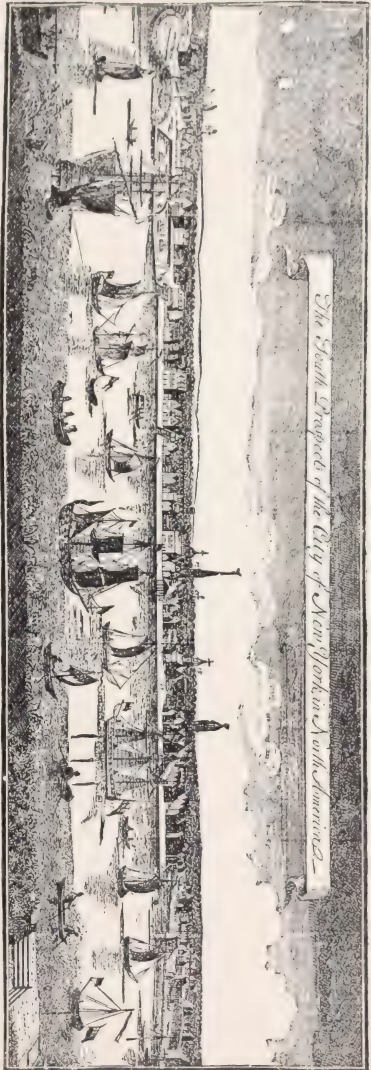
<sup>1</sup> Judge Jones says he saw the books which Joseph Murray, the lawyer, had bequeathed to King's College, "publicly hawked about the town for sale by private soldiers, their trulls and doxkeys." "I saw," he adds, "an Annual Register, neatly bound and lettered, sold for a dram, Freeman's Reports for a shilling, and Coke's

1st Institute, or what is usually called Coke upon Littleton, was offered to me for 1s. 6d. I saw in a public house on Long Island nearly forty books, bound and lettered, in which were affixed the arms of Joseph Murray, Esq., under pawn for from one dram to three drams each."

ience by local and temporary regulations, but these were not approved by the provisional government.'

It was not until 1780, on the arrival of General Robertson, who displaced Tryon as civil governor, that "Courts of Police" were established and a pretense made of re-establishing the Supreme Court. The chief-justice and Justice Hicks were dead, leaving Ludlow and Jones. To the chagrin and indignation of these two surviving judges, whose loyalty to the crown was unquestionable, a mere practitioner at the bar, and one whose loyalty was subject to suspicion at least, formerly an ardent and even violent young whig and presbyterian partisan, was preferred to them at a salary of £500 sterling. This was William Smith, the younger, better known to us as the historian of the province. He was appointed, says Judge Jones (truly enough), "at a time when no law but Military and Police law existed, when not a Court of Justice under the jurisdiction of Britain was open, and when there was no more occasion for a chief-justice than there was for a Bishop or a Pope."

FROM AN ENGRAVING IN THE "LONDON MAGAZINE," AUGUST, 1761.



<sup>1</sup> Sparks' "Life of Gouverneur Morris."

Appointed after the Declaration of Independence, he has never been recognized as a member of the provincial Supreme Court, though but for his final and hesitant defection from the friends of his youth in his country's struggle for independence, his name must be numbered among those of his contemporaries who adorn the annals of New York.

### THE LATER COLONIAL BAR.

The generation of New York lawyers on the stage for the quarter of a century or more before the Declaration of Independence was composed of men who, whether for their learning in the law, their skill in forensic contests, or their liberal views and enlightened patriotism in matters of public concern, were the equals of any colonial bar, and worthy to be associated in history with their better known immediate successors, John Jay, James Duane, Gouverneur Morris, Robert R. Livingston, Jr., Egbert Benson, Peter Van Schaack, and others less well known. As a body they obtained a very remarkable influence in shaping popular opinion in opposition to the increasing arbitrary action of the British king and parliament. Writing to the Earl of Halifax, February 22, 1765, Lieutenant-Governor Colden deprecated the growing influence of the lawyers:

The dangerous influence (he said) which the Profession of the law has obtained in this Province, more than in any other part of his Majesty's Dominions, is a principal cause of disputing appeals to the King, but as that influence likewise extends to every part of the Administration, I humbly conceive that it is become a matter of State which may deserve Your Lordship's particular attention. After Mr. De Lancey had, by cajoling Mr. Clinton, received the Commission of Chief-Justice during good behaviour, the Profession of the Law entered into an Association the effects of which I believe Your Lordship had formerly opportunity of observing some striking instances. They proposed nothing less to themselves than to obtain the direction of all measures of Government, by making themselves absolutely necessary to every Governor in assisting him while he complied with their measures & by distressing him when he did otherwise. For this purpose every method was taken to aggrandise the power of the Assembly, where the profession of the law must allwise have great influence over the members, & to lessen the Authority & influence of the Governor. In a country like this, where few men, except in the profession of the Law, have any kind of literature, where the most opulent families, in our own memory, have arisen from the lowest ranks of the people, such an association must have more influence than can be easily imagined. By means of their profession they became generally acquainted with men's private affairs & necessities, every man who knows their influence in the Courts of Justice is desirous of their favor & affrayed of their resentment. Their power is greatly strengthened by enlarging the powers of the popular side of government & by depreciating the powers of the Crown. The Proprietors of the great tracts of Land in this Province have united strongly with the lawyers, as the surest support of their enormous & iniquitous claims & thereby this faction has become the more formidable and dangerous to good Government. Mr. Prat, who had no family or private connections in this Province, while he was Chief Justice, discovered the dangerous influence of this faction in the Administration of Justice, as well as otherwise, and resolved with the



assistance of Government to have crushed it; but he was prevented by death. Many who have either felt or perceived the bad effects of the domination of lawyers lament the loss of such a judge. All Associations are dangerous to good Government, more so in distant dominions, & Associations of lawyers the most dangerous of any next to the Military. Were the people freed from the dread of this Dominion of the Lawyers I flatter myself with giving general joy to the People of this Province. I never received the least opposition in my administration except when I oppose the views of this Faction. I am confident their views intirely defeated by the means I humbly proposed in my praeceding letter, with the concurrent assistance of his Majesty's Ministers when it becomes necessary.<sup>1</sup>

The influence of the legal profession in shaping public opinion in the colonies, in hostility to the stamp act and other legislation of parliament intended to impose obligations of British citizenship, without bestowing corresponding rights, was fully recognized in England.



BRITISH LEAVING NEW YORK.

Edmund Burke, who was well acquainted with New York affairs, having been the London agent of the province from December, 1770, until the dissolution of the assembly in April, 1775,<sup>2</sup> declared that very early in the history of the American colonies their respect for law was remarkable. "In no country perhaps in the world," he said, "is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the deputies sent to congress were lawyers. But all who read—and most do read—endeavor to obtain some smattering of that science. I have been told by an eminent bookseller that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the plantations. The colonists have now fallen into the way of printing them for their own use. I hear that they have

<sup>1</sup> N. Y. Col. Docs., vii., 705.

<sup>2</sup> His correspondence with the assembly has never been published, and no part of it is known to exist in the United States, except a MS. copy of a letter con-

cerning the Quebec Bill, which the New York Historical Society has. No one knows what has become of the papers of the colonial assembly.



sold nearly as many of Blackstone's Commentaries in America as in England."<sup>1</sup>

Sir William Blackstone's celebrated Commentaries—"too celebrated," according to John Austin—were published in London in 1765–8 in four volumes. The first American edition, in four folio volumes, was published in Philadelphia by Robert Bell in 1771–3; and, in 1774, a second edition, in four volumes quarto, was advertised as in press. But it was not the milk-and-water of Blackstone, but the strong meat of Coke, that nourished the early American lawyer. Writing more than half a century after Blackstone's appearance, Thomas Jefferson mourns over his reminiscences of the time before Blackstone. In a letter to President Madison, February 17, 1826, alluding to Coke's First and Second Institutes as being the text-books of American law-learning, when he himself was a student of them—and Blackstone, too, a novice—"a man," he writes, "of profounder learning in the orthodox doctrines of the British Constitution, or in what were once called English Liberties, never wrote. But when his black letter text and uncouth cunning learning got out of fashion, and the honeyed Mansfieldian of Blackstone became the student's hornbook, from that moment, that profession began to slide into torpor; and nearly all the young brood of lawyers are now of that line."<sup>2</sup>

To that former generation of strong men, of whom Jefferson speaks, belonged such lawyers, in New York, as William Nicoll, James Emott, already mentioned, Joseph Murray, James Alexander, the two William Smiths—father and son,—William Livingston, John Morin Scott, John Chambers, Samuel Jones, Richard Varick, Richard Morris, and Benjamin Kissam. Their pupils, forming the junior bar when the outbreak of the Revolution was close at hand, were John Jay, Robert R. Livingston, Jr., Peter R. Livingston, Gouverneur Morris, Egbert Benson, Peter Van Schaack, and George Clinton.

Of the judges in office at the Declaration of Independence—Horsmanden, Thomas Jones, Ludlow, and Hicks—all maintained their

<sup>1</sup> Burke's Works, i. 188.

<sup>2</sup> "Letters and Correspondence," iv., 436; Tucker's "Life," ii. 547. Before that, in a letter to Judge Tyler, of June 17, 1812 ("Letters & Cor." iv., 183; Tucker's "Life," ii., 361), he said he had been laboring to "uncanonize" Blackstone in America and restore the worship of Coke—but all in vain. It may be worth while to notice the text-books placed in law students' hands before Blackstone gave them a quietus. Sir Henry Finch's "Of Law, or a Discourse thereof," was the law-student's first manual and principal guide. Originally published in 1613, in law-French, under the title of "*Nomotechnia*," with a long sub-title, an English translation by the author was published fourteen years later. It was annotated by Dunby Pickering in 1759. Wood's "Institutes of the Laws of England," in two volumes, published in 1722, with a tenth and last edition appearing in 1723—which Blackstone says was little more than Finch's Discourse modernized—paled before the bright light of the immortal commentator. Sir Matthew Hale's "His-

tory of the Pleas of the Crown," published posthumously, in two volumes, in 1736, and Bohun's "*Institutio Legalis*" were regarded as indispensable, to say nothing of Jacob's "Law Dictionary" (1729), his "Law Grammar" (1749), and his "Practising Attorney's Companion." Of course, "Coke on Littleton" was the great standard text-book. Robert Bell's publishers'-list of reprints advertised in 1774 probably contains the text-books thought to be essential to every lawyer's working library at that time. They were: (1) "Coke's Commentaries upon Littleton in one large folio, page for page with the last London edition, at sixteen Dollars to subscribers, although the London edition is sold at 32 Dollars; (2) Bacon's New Abridgment of the Law in five volumes 4-to, page for page with the last London Edition at 20 Dollars to subscribers, although the London edition is sold at 40 Dollars; (3) the second edition of Blackstone's Commentaries, at 3 Dollars per volume."

adherence to the crown, as did Jauncey, the master of the rolls ; but, as a body, the lawyers espoused the cause of their country, in whose councils many of them, as we know, attained positions of commanding influence. It was a frequent taunt in ministerial circles, at Westminster, that the whole unfortunate trouble, from the stamp act on to the Declaration, was an affair of the colonial lawyers. This was, in part, the truth. But that the cause of institutional liberty, fought out here, was the cause of England, as well as of America, has been often acknowledged in the mother country ; for "there remains no doubt," says Buckle, "that the American war was a great crisis in the history of England, and that if the colonies had been defeated, our liberties would have been for a time in considerable jeopardy."<sup>1</sup>

<sup>1</sup> "History of Civilization," i.

## JUDICIAL ORGANIZATION AND LEGAL ADMINISTRATION FROM 1776 TO THE CONSTITUTION OF 1846.

**I**N order clearly to understand how the law was administered in the State of New York, after the Declaration of Independence, it is necessary that one should have some knowledge of the status of the law at that period of New York's development.

In 1756 William Smith wrote a "History of New York," which contains a good account of the laws and of the courts of the Colony or Province of New York immediately prior to the Declaration of Independence. He was well qualified to speak on the subject, because he was himself a lawyer of ability, and was at one time the chief-justice of the Supreme Court of the province. He says that the state of the law opened the door to much controversy; that the common law of England and such statutes as were enacted before the province had a legislature of its own were generally received; and that the practice of the courts was uncertain, some of the English rules being accepted and others rejected. The courts named by him are the Justices' Court, the Sessions and Court of Common Pleas, the Supreme Court, the Court of Admiralty, the Prerogative Court, the Court of the Governor and Council, and the Court of Chancery.



GREAT SEAL OF NEW YORK.



NEW YORK SEAL, 1777.

Justices of the peace, he says, were appointed by commission from the governor; some of them could neither read nor write. Besides their ordinary powers they were enabled by acts of the assembly to hold court for the determination of small cases of £5 and under, but the parties might have, if they chose, a jury of six men. The justices had jurisdiction in criminal cases under the degree of grand larceny, and any three of them might try

a criminal without a jury, and inflict punishment not extending to life or limb.

The Court of Common Pleas had cognizance of all cases where the matter in demand was in value above £5. There were ordinarily three judges who held their office during pleasure, and these judges, together with some of the justices of the peace, held at the same time Courts of the General Sessions of the Peace.

The jurisdiction of the Supreme Court extended through the whole province, and its powers were very great, for it took cognizance of all causes civil and criminal, as fully as the King's Bench and Common Pleas at Westminster. In civil cases the value of the sum demanded must exceed £20. It held court four times in the year, and

always at New York; it had a chief-justice and two associate justices. The chief-justice had ten shillings as a perquisite upon the first motion in every case, together with an annual allowance of £300. The judges were judges of *nisi prius*, of course, and went over a circuit of the counties once every year. They also carried with them a commission of Oyer and Terminer and general jail delivery, in which



SHAKESPEARE TAVERN, CORNER FULTON AND NASSAU STREETS.<sup>1</sup>

some of the county justices were joined. In 1765 an act was passed directing barristers, etc., to wear robes, but it never was obeyed by those concerned.

The Court of Admiralty had jurisdiction in all maritime affairs, not only in New York, but also in New Jersey and Connecticut. The proceedings were according to the course of the civil law.

The business of the Prerogative Court related to the probating of last wills and testaments, and the granting of letters of administration on intestates' estates. The powers relative to these matters were committed to the governor, who acted by a delegate.

The Court of the Governor and Council seems to have been an appellate court, in all cases where the value of the litigation did not exceed £300 sterling.

<sup>1</sup> This tavern, erected many years before the Revolution, was the favorite resort of prominent lawyers, politicians, statesmen, and other celebrities during the

last part of the eighteenth century and the first thirty years of the present century. It was demolished in 1836.

The Court of Chancery was the most obnoxious of all the courts to the people ; it seems to have had the same jurisdiction as the Court of Chancery at Westminster.

All of the courts mentioned by Smith, except the Prerogative Court and the Court of the Governor and Council, were continued under the constitution of 1777.

This in brief was the condition of affairs relating to the administration of justice on the 19th day of April, 1775, the day on which the shot was fired that was heard around the world, and the day from which the legal history of the State as distinguished from the Colony of New York begins, although New York was not legally declared to be a state until July 8, 1776. The writer does not wish to be understood as saying that it was because the battle of Lexington was fought on the 19th day of April that the first constitution of the state declared that "such parts of the common law of England and of the statute law of England and Great Britain . . . as together did form the law of the said Colony on the 19th day of April, 1775, shall be and constitute the law of this State." The convention at which this constitution was adopted met on the 20th day of April, the Colony of New York ceased to exist on the 19th day of April, and the State of New York began to exist on the 20th day of April, 1775.

It is also necessary, in order fully to understand the administration of the law in 1775, that a few words should be said about the people among whom and over whom the law was administered.

At the time above mentioned the population of the state—white and black—was about 175,000. It was divided into twelve counties—Suffolk, Queens, Kings, Richmond, New York, Westchester, Dutchess, Cumberland, Gloucester, Charlotte, Orange, Ulster, Albany, and Tryon. New York county was not the largest, although it was the chief place of trade and of fashion in the colony. In 1771 Albany county had 42,706 inhabitants, Dutchess 22,404, while New York had but 21,863. The constitution of 1777 gave Albany county ten members of assembly, New York nine, Dutchess seven, and Westchester six. The only newspaper outside of the city of New York was the *Gazette*, which was established at Albany in 1771. There were but few roads, and most of them were poor ones, and the means of communication were so slow that news of the battle of Lexington did not reach the City of New York until the 24th of April. The inhabitants were mostly of Dutch descent, although there were many settlers of English descent in some of the counties, notably Suffolk county.

A good idea of the primitive condition of the country may be obtained from an act passed on the 19th day of March, 1778. It is entitled "An act to ascertain the places from whence the milage fees of the respective sheriffs of the several counties in the state shall be computed."

It provides "That the Sheriff of Suffolk County shall compute his





fees from a path commonly known as the Wading River Path, about seven miles to the westward of the County Hall in said County, at the junction of said path with the County Road which passes through Nassau Island, about the middle thereof; the Sheriff of Queens County from a certain pond commonly called Wind Mill Pond, near the north side of Hempstead Plains; the Sheriff of Dutchess County from the house wherein Myndert Vielle Esq., now lives in Beekman's Precinct; the Sheriff of Westchester County from the house of William Ogden in North Castle; the Sheriff of the County of Ulster from the house of Mrs. Ann DuBois, in the neighborhood of the New Paltz in said county; the Sheriff of the County of Tryon from a pass in the mountain called Anthony's Nose in said County; the Sheriff of the County of Charlotte from the meeting-house in the town of New Perth, and the Sheriff of the County of Gloucester from the meeting-house in the Town of Newbury in said County."

At the time of the Declaration of Independence and for some time thereafter the rules relating to the admission of attorneys and counsellors were very lax. Smith, in the History above referred to, complains that the door of admission to the practice of the law was too open.

The usual preparation for admission to the Supreme Court was a college or university education and three years' apprenticeship, or without the former, seven years' service under an attorney. In either of these cases the chief-justice recommended the candidate to the governor, who thereupon granted a license to practice, under his hand and seal at arms. After taking the usual oath the person then became qualified to practice in every court in the province. Attorneys were admitted into the county courts with less ceremony; for the governor formerly licensed all persons, no matter how indifferently recommended, and the profession was shamefully disgraced by the admission of men, not only of the meanest abilities, but of the lowest employments.

The constitution of 1777 provided that all attorneys, solicitors, and counsellors-at-law should be appointed by the court in which they were to practice, and should be licensed by the first judge of such court, and should be regulated by its rules and orders. The writer has not been able to find any rule in the Supreme Court relating to the admission of attorneys and counsellors-at-law of an earlier date than those of the October term, 1797, which are to be found in Coleman and Caines's "Cases of Practice, determined in the Supreme Court of Judicature of the State of New York, from April term, 1794, to November term, 1805, both inclusive. To which is prefixed all the rules and orders of the Court to the present time."

These rules provide that no person shall be admitted to practice as an attorney of the Supreme Court, unless he shall have served a regular clerkship of seven years with a practicing attorney of the court; but any period of time, not exceeding four years, during which

a person after he shall have been fourteen years of age shall have pursued classical studies, shall be accepted in lieu of an equal portion of time of clerkship.

These rules also provide for filing a certificate of clerkship, and that if the clerkship shall be intended to be for less than seven years because of the fact that the person has pursued classical studies, that an application shall be first made to a judge, who on examination of the matter shall make an order which is to be annexed to the certificate, purporting that it satisfactorily appears to him that the person applying has pursued classical studies after he was fourteen years of age, for such a period of time, not exceeding four years, as shall be specified in the order, and thereupon ordering that the clerkship shall be for the term which shall remain after deducting from seven years the time so to be specified in the order. After four years' practice an attorney was entitled, as of course, to be admitted to practice as counsel. This rule was modified by a rule of the November term, 1804, so that a practice of but three years was required. By a rule of the August term, 1806, it was provided that no person other than a natural born or naturalized citizen of the United States should be admitted as an attorney and counsellor of the Supreme Court of the State of New York.



PROVOST JAIL, NOW HALL OF RECORDS.

The rules relating to the admission of solicitors in chancery are substantially to the same effect, except that the person applying to be admitted was examined before the chancellor, vice-chancellor, or such other officer of the court as the chancellor directed upon a special order for examination previously made.

Rule 8 of the Supreme Court, passed at the January term, 1799, affords an instance of the primitive condition of the State of New York in that year. It requires every attorney residing in the City of New York to have an agent in the City of Albany, and every attorney residing in the City of Albany to have an agent in the City of New York, and attorneys residing elsewhere to have two agents, one in the City of New York and the other in the City of Albany. The object of this rule was to make it less difficult to serve papers on attorneys in actions.

Many of the most prominent attorneys and counsellors-at-law either sided with the crown or were lukewarm toward the colony. For that reason an act was passed in 1779, which recited in its preamble that many persons who had been licensed to plead and practice as attorneys, solicitors, and counsellors-at-law in the several courts of Law and Equity within the State whilst the same was under the government of the King of Great Britain, as the Colony of New York, regardless of the duty which they owed to their oppressed coun-

try, had some of them gone over to and put themselves under the protection of the armies of the king, and others had conducted themselves in such a neutral or equivocal manner as had justly rendered them suspected of disaffection to the freedom and independence of this state; and that it would be inconsistent with the welfare of this state that such persons should be allowed to plead and practice in any courts within the same; and the constitution of this state having subjected to the rules and orders of the Supreme Court only such attorneys, solicitors, and counsellors-at-law as should thereafter be appointed, the act suspended all licenses to plead or practice granted to attorneys, solicitors, and counsellors-at-law before the 21st day of April, in the first year of the independence of the state.

The act also provided that persons so suspended were entitled to have a writ of inquiry into their political character issued to the sheriff of the county. The sheriff thereupon summoned a jury, who was directed to inquire whether the person suspended had uniformly and consistently conducted himself as a good and zealous friend of the American cause. If it appeared that he had so conducted himself, he was restored to his full privileges as an attorney, solicitor, and counsellor-at-law. This act was modified somewhat by Chapter 13 of the laws of the fifth session, so that the attorney-general was entitled to notice of the time and place of the execution of the writ of inquiry.

But while many lawyers sided with the crown, we must not forget the debt of gratitude we owe to those patriotic lawyers who risked their lives and fortunes on the side of the colony. To Livingston and Jay, to Scott and Benson, to Yates and Morris, we owe the first constitution of the state, and some of them assisted in drafting the Declaration of Independence and the Articles of Confederation. In fact no state made as many sacrifices in the cause of free government during the Revolution as did the State of New York, and the lawyers of the state were not behind the rest of their fellow-citizens.

The constitution or plan of government adopted on the 20th day of April, 1777, did not in set terms create the Court of Chancery or the Supreme Court, or in fact any other court; it simply recognized certain courts as then existing. For instance, it provided that the governor for the time being, the chancellor, and the judges of the Supreme Court, or any two of them, should constitute a council of revision to revise all laws passed by the legislature. It also provided that the chancellor and judges of the Supreme Court should not at the same time hold any other offices excepting that of delegate to the general congress on special occasions, and that the first judges of the County Court in the several counties should not at the same time hold any other office except that of senator or delegate to the general congress; but if the chancellor or any other of said judges should be elected or appointed to any other office excepting as above excepted, it should be his option in which to serve. It also provided that the register and







should not have a voice in the final judgment, and if the cause to be determined should be brought by a writ of error on a question of law on a judgment in the Supreme Court, the judges of that court should assign the reason of their judgment, but should not have a voice in its affirmance or reversal.

The power of impeachment of officers of the state for mal and corrupt conduct was vested in the representatives of the people in assembly.

Section 34 provides that in every trial on impeachment, or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel as in civil causes.

One of the most important sections is the 35th, which provides that such parts of the common law and statute law of New York and Great Britain, and of the acts of the legislature of the Colony of New York, as together did form the law of the colony on the 19th day of April, 1775, shall be and continue the law of this state, subject to such limitation and provision as the legislature of this state shall make concerning the same; that such of said acts as are temporary shall expire at the times limited for their duration respectively, and that the resolves or resolutions of the Colony of New York, and of the convention of the State of New York, then in force and not repugnant, shall be considered as making parts of the laws of this state, subject nevertheless to such laws and provisions as the legislature of the state shall make concerning the same.

The 41st section provides that the trial by jury in all cases in which it had been used in the Colony of New York shall be established and remain inviolate forever; that no acts of attainder shall be passed by the legislature of the state for crimes other than those committed before the termination of the late war; that such acts shall not work a corruption of blood, and that the legislature of the state shall at no time institute any new court or courts but such as shall proceed according to the course of the common law.

It may be noted that the "constitution or plan of government" was adopted Sunday, April 20, 1777, by the delegates of the provincial convention. On the same day Mr. Robert R. Livingston, General Scott, Mr. Morris, Mr. R. Yates, Mr. Jay, and Mr. Hobart were appointed a committee to prepare and report a plan for organizing and establishing the government agreed to by the convention. On the 8th of May this plan was finished and adopted.

It appointed Robert R. Livingston, chancellor; John Jay, chief-justice; Robert Yates and John Sloss Hobart, puisne judges of the Supreme Court, and Egbert Benson, attorney-general of the state. It also appointed Volkert P. Douw, first judge, and Jacon TenEyck, Abraham TenBroeck, Henry Bleeker, Walter Livingston, and John H. TenEyck, judges of the County of Albany, Henry I. Wardell, sheriff, and Leonard Gansevoort, clerk of said county; Ephraim Paine,

## A Roll for Attornies sworn in the Supreme Court

I. . . . . do solemnly, without any mental Reservation or Equivocation which  
 cover, swear and believe, that I renounce and abjure all Allegiance and Subjection  
 all and every foreign King, Prince, Potentate and State, in all Matters ecclesi-  
 astical as well as civil, and that I will bear Faith and true Allegiance to the  
 State of New York, as a free and independent State.

I. . . . . do swear, that I will truly and honestly discharge myself in the ex-  
 ercises of an attorney, according to the best of my knowledge and Ability

Peter L Van Allen 22<sup>nd</sup> April 1790

Henry Wallon 5<sup>th</sup> May 1791.  
 St. Bondians 6<sup>th</sup> May 1791

James B. Clarke 22 April 1790

David Jones 23 April 1790

John Crockett 22<sup>nd</sup> April 1790

Francis Arden 23 April 1790

William Van Brunt 23 April 1790

De Witt Clinton 24<sup>th</sup> April 1790

Caleb S. Piggs 24<sup>th</sup> April 1790

Charles Richardson April 24<sup>th</sup> 1790

Robt. Briggs April 26<sup>th</sup> 1790.

John M. Neill April 29<sup>th</sup> 1790

John P. Henry May 1<sup>st</sup> 1790

Vincent Matthews May 4<sup>th</sup> 1790

Edward Graham May 15<sup>th</sup> 1790

Jonas Platt July 27<sup>th</sup> 1790.

Francis Bloodgood August 5<sup>th</sup> 1790

Samuel DeGo. August 5<sup>th</sup> 1790

John Howard 29 July 1791

Jaac L. Hips 29 July 1791

Anthony Delmonico 29

James Emott 1 Aug<sup>st</sup> 1791.

Abm. M. Walton October 19<sup>th</sup> 1791

Peter Meser Jan<sup>y</sup> 19<sup>th</sup> Oct<sup>r</sup> 1791

Dr. Balthusich 27 Oct<sup>r</sup> 1791.

John Nickham 21 Jan<sup>y</sup> 1792

Thomas Morin 21 Jan<sup>y</sup> 1792

Henry Lyle 20 Jan<sup>y</sup> 1792

Martin S. Watkins 25 April 1792

Jos. Vander Meer 20 Aug<sup>st</sup> 1792

John Barton Biron

Oct<sup>r</sup> 24<sup>th</sup> 1792

Peter D. Van Dyke 20 Oct<sup>r</sup> 1790

Nicholas Toms 20<sup>th</sup> October 1790

Thomas Blich 20<sup>th</sup> October 1790

Henry McLennan Jan<sup>y</sup> 20<sup>th</sup> 1790



October last," at the rate of £300 per annum. The salary of the chief-justice was fixed at the same rate, and that of the puisne judges at the rate of £200 per annum. In addition to the above-mentioned sum, the chief-justice and the puisne judges received the sum of forty shillings each for each and every day they attended on commissions of Oyer and Terminer and general gaol delivery in the several counties, and for each and every day they were traveling for that purpose. Chapter 31, passed on the 25th of October, 1779, gave Yates and Hobart, "for extraordinary duties and service in his office from the 5th day of July last, and in consideration of the advanced prices of the necessaries of life, the sum of \$1,000" each.

Chapter 34 of the Laws of 1779 gave the chancellor £400 per annum, the chief-justice £400, and each of the puisne judges £300 per annum. The chief-justice and the puisne judges also received the



VIEW OF NEW YORK FROM REAR OF COLONEL RUTGERS' HOUSE, 1776.

sum of \$10 for each day they attended on the execution of commissions of Oyer and Terminer and general gaol delivery, and each day they travelled for that purpose. These salaries were changed but little until 1813, when an act (Chapter 238) was passed which gave the chancellor, the chief-justice, and the judges each a salary of \$3,500.

In addition to their salary, the chancellor and judges were entitled to receive certain fees, which varied from time to time. As an instance of the fees received, I quote from an act passed the 18th of April, 1785.

The chancellor was entitled to receive for the seal to every common writ, three shillings; for exemplifications, twenty shillings; for every decree, £2; for every opinion or order, on a petition or motion, twenty shillings; for every order appointing a guardian, ten shillings. The master in chancery was entitled to receive three shillings for every summons; £1 for every report or certificate made pursuant to order; five shillings for every certificate or report made upon petition or motion, and for drawing every report, one shilling per sheet. The



judges of the Supreme Court received for allowing a writ of error or marking the roll that the writ is allowed, five shillings; for signing every writ of privilege, *habeas corpus*, *procedendo*, *certiorari*, or prohibition, three shillings; for acknowledging a deed, four shillings; for licensing an attorney, ten shillings; taxing a bill of costs, six shillings; and every attorney, when admitted, paid to the judges who were present ten shillings. The judges attending were also paid five shillings on the first motion in every cause, except a criminal one, which money was divided among them.

The first act relating to the revision of the laws of this State was passed on the 15th day of April, 1786. The preamble of the act calls attention to the declaration in the constitution of the state that certain parts of the law of England and the Colony of New York continued to be the law of this state, and that "such of said statutes as have been generally supposed to extend to the late Colony of New York and to this state are contained in a great number of volumes, and such statutes, as well as the acts of the legislature of the late colony, are conceived in a style and language improper to appear in the statute-books of this state." It directed Samuel Jones and Richard Varick to collect and reduce into proper form, under certain heads or titles of bills, all the statute laws of England referred to in the constitution, and all public acts of the late colony, which then remained in force, and to lay the same before the legislature, from time to time,

in order that such of them as should be approved by the legislature might be re-enacted into laws of this state, "to the extent that when the same shall be completed, then and from thenceforth none of the statutes of England or of Great Britain shall operate or be considered as laws of this state." The act further provided that after this had been done, a compilation of all the laws in force should be made and printed, except that only the titles of obsolete acts should be printed. It gave the com-



NEW YORK COPPER  
"TOKEN," 1786.

pileers two years in which to do the work, and allowed each a yearly salary of £400. The book was printed in 1789 in two volumes folio.

The next statute relating to the revision of the law was passed on the 28th day of March, 1800. It appointed James Kent and Jacob Radcliffe commissioners for such purpose, and directed them to collect and reduce into one act all parts of acts relating to the same subject; to omit therefrom any part or parts of acts that have been repealed, or had expired by their own limitation, and to transcribe all such acts or parts of acts and lay the same before the legislature from time to time, as they are prepared, to be re-enacted as the legislature should think proper. Two years were given to them in which to do the work, and an allowance of \$1,000 each was made for their services.

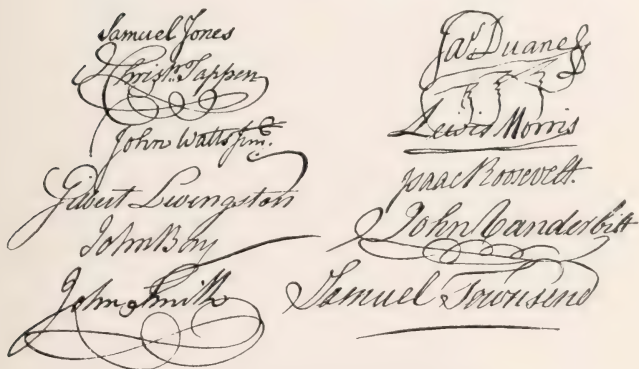
It is evident that the commissioners immediately went to work,



because the acts passed at the next (twenty sixth) session of the legislature took up as much space as all those passed at the three or four preceding sessions, and embraced matters relating to the granting of letters of administration, writs of error, habeas corpus, the Court of Oyer and Terminer, the Court of Impeachment, the Supreme Court, trial of issues, and writs of *certiorari*.

Chapter 194 of the Laws of 1801 (twenty-fourth session) also authorized Kent and Radcliffe to print the Laws of 1801, and gave to each of them, for his services in reference to the same, the sum of \$850.

*Given under our Hands at the said Office of the  
Secretary of this State in the City of New York the  
fourth Day of June in the thirteenth Year of the  
Independence of this State and in the Year of  
our Lord one thousand seven hundred and eighty nine.*



Samuel Jones  
Christ Tappen  
John Watkinson  
Gilbert Livingston  
John B. B. B.  
John Smith

J. A. Duane & Lewis Morris  
Jacob Roosevelt  
John Vanderbilt  
Samuel Townsend

SIGNATURES OF PROMINENT LAWYERS AND OTHERS.

The revision of Kent and Radcliffe was printed in 1802 in two volumes octavo.

The third revision was made by William P. VanNess and John Woodworth, pursuant to Chapter 150 of the Laws of 1811. It is contained in two volumes octavo, printed in 1813.

The next and last revision was made under Chapter 324 of the Laws of 1825, Chapter 9 of the Laws of 1827, and Chapter 321 of the Laws of 1828. The act of 1825 authorized John Duer, Benjamin F. Butler, and Henry Wheaton to make, collate, and revise certain acts

of the legislature. Mr. Wheaton, upon being appointed chargé d'affaires of the United States to the court of Denmark, in 1827, resigned his office of commissioner, and Governor DeWitt Clinton appointed John C. Spencer in his place. To those three men, Duer, Butler, and Spencer, we owe a revision of the statute law of the state that has lasted from 1827-8 to the present time.

There were two revisions of the laws prior to the adoption of the constitution of 1777, one made by William Livingston and William Smith, pursuant to an act passed in 1751, and the other made by Peter Van Schaack, pursuant to an act passed on the 24th of March, 1772. Van Schaack's revision was printed by Hugh Gaine, in two volumes folio, although it has the pagination of one volume. The reviser was paid £250 for his work, and the printer twenty shillings for printing each sheet. Taking it altogether, it makes a very presentable book.

The earliest record relating to the Court of Chancery that I can find is the book of "Chancery Minutes, June, 1785, to April, 1789." The court was held at the City Hall in the City of New York. The first record is dated June 10, 1785, and is in the cause of Thomas Vardill *vs.* Lambert Moore. Mr. Lewis appeared for the "complainant" and Mr. Troup for the defendant. In the next cause Mr. B. Livingston appeared for one side and Mr. Hamilton for the other. Six matters came before the court on that day. The counsel that appeared, besides those above mentioned, were Mr. Cozine and Mr. Dunscomb; Mr. Burr had a cause in court the next day. On the 28th of June, the court was held at Claremont, manor of Livingston. On the 28th and



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"TOKEN," 1785.

29th days of July it was held at the court-house in the City of Albany, where Mr. Lansing, Mr. Cook, Mr. B. Livingston, Mr. Troup, Mr. Lush, Mr. Benson, Mr. Burr, and Mr. Lewis appeared as counsel. On the 17th day of August, court was again held at Claremont, but it was back in New York on the 1st day of October, on which day the only business transacted was a motion by Mr. Lewis of counsel for complainant in the cause of Connor *vs.* Smith that "publication pass" on the 8th day of October and Mr. B. Livingston of counsel for defendant consenting, the motion was granted. On the 11th day of November, 1785, it was ordered that Edward Livingston, one of the attorneys of the Supreme Court, be examined by Mr. Lewis and Mr. B. Livingston as to his qualifications for admission as a solicitor in chancery. On the 24th day of April, 1786, they reported that they had examined him and found him of sufficient ability to practice as solicitor and counsel in the court, and he was accordingly admitted as such. On the 7th day of December, 1785, at a "court of chancery held at the chancellor's chambers in the city of New York," the chancellor "ordered Mr. John Lansing to transmit to the register of the court such of the

rules of this court as were in his possession, together with all other papers belonging to the court." A court of chancery was held on the 17th day of March, 1786, before the chancellor, the chief justice of the Supreme Court, Richard Morris, and John Sloss Hobart, judge. The case of John Mannsell *et al. ads.* Deborah Smith was before the court. The entry in the book is as follows: "this day after debate by Mr. Burr and Mr. Hamilton of counsel for defendants, and Mr. B. Livingston of counsel for complainants, respecting interest to be allowed during the war, the Court takes time to consider until Friday next." The same court met on the 24th of March, and the chancellor, "after full argument and mature deliberation," decided that there should be no allowance of interest from July 7, 1776, to January 1, 1784. The cause appears to have been one to recover the interest on a legacy of £1,000 from July 7, 1767.

Johnson, in the preface to the first volume of his Chancery Reports, says that little business was transacted in the Court of Chancery prior to its organization in March, 1778, under the constitution of the state. I have caused a very careful examination of the records and books in the office of the clerk of the City and County of New York to be made, and have succeeded in finding but one book of records prior to the Revolution, and that is the minutes of the court from April 5, 1770, to January 9, 1776. I do not think that any business was transacted in the court during the Revolution. New York City was in possession of the British from September 16, 1776, to November 25, 1783, and it is said that when they left the city they took with them all the records of the Court of Chancery and of the Supreme Court. Our first chancellor, Livingston, could not have done much court work prior to the evacuation because of the state of the country, and also because much of the time he was otherwise engaged. For instance, he was secretary of foreign affairs for the United States in 1781-3. At any rate, the first record of his holding court that I have been able to find is contained in the Book of "Minutes of the Court of Chancery" above referred to. An examination of the last Book of Minutes of the Colonial Court of Chancery and of the first Book of Minutes of the state court shows that the business in the two courts was about the same. Most of it related to infants and lunatics.

I have been able to find but one "opinion" in the two books, and that is an opinion by Governor Tryon in the case of the Reverend Joshua Bloomer *vs.* Robert Hinchman and Phillip Edsall. The cause came before the court on the 2d day of November, 1771, on which day Mr. Scott of counsel for the defendants argued in support of a demurrer, and Mr. Kempe of counsel for the complainant asked a further day to answer. On the 25th day of the same month the court



NEW YORK COPPER "TOKEN,"  
1794.

heard "in part" the argument of counsel for the complainant against the demurrer; the next day complainant's counsel finished his argument, and on the 16th of May defendants' counsel was heard in reply, and the court ordered that the demurrer be overruled, and that the defendants give a fuller answer. Certain other proceedings were had in the cause. On March 3, 1774, Mr. Duane of counsel for the complainant was ordered to deliver to the defendants' counsel notes of his argument within ten days, and defendants' counsel were directed to deliver notes of their argument to complainant's counsel within ten days thereafter, and the cause be "finally heard the next term."

The cause was heard on the fourth of April, 1774, and on the fifth of the same month the court rendered the following opinion, viz. :

New York Court of Chancery,  
5th April, 1774.

I have had the case between Mr. Bloomer, minister and the Church Wardens of the Parish of Jamaica, long under consideration and have reviewed it with all the deliberation which its importance required.

To me it appears clear from the authorities produced and arguments advanced in the hearing of the cause, that the National Church of England is established within this Colony. That the Provision by the Ministry Acts in question was intended and can only be applied for the support of the Clergy of that Church, and that in case of a Lapse, the Governor by virtue of his delegated authority from the Crown, as well as by the terms of the Acts themselves, has a right to collate; upon these principles in general, I am of opinion that Mr. Bloomer is duly collated and inducted to the care of the Parish of Jamaica. That his title is well established and that he is the lawful incumbent.

I do therefore decree that the defendants shall on or before the fourth day of June next, at the door of the Parish Church of Jamaica, and between the hours of ten and twelve, in the forenoon, pay Mr. Bloomer his salary from the time of his Induction on the 23rd day of May 1769 to the commencement of his suit in this Court, out of any monies that may have accrued under the Ministry Act and have been received by the defendants as Church Wardens, prior to the filing of the Bill, but without any interest.

It appears from the answer that the defendants according to the advice of their counsel were in doubt of the validity of Mr. Bloomer's title and there having hitherto been no judicial determination upon the point, I do not think it reasonable to order them to pay the costs, which therefore, must be sustained by the respective parties, and as to the salary which has accrued to Mr. Bloomer since filing the Bill, it can not properly be comprehended in this Decree; but I however do recommend it to the Parish of Jamaica to pay all arrears of salary to the Rev. Mr. Bloomer that are due to him since the filing of the Bill, as any delay or further dispute would justly subject them to the payment of costs.

WILLIAM TRYON.

The last entry contained in this book is of an application made before "His Excellency William Tryon, Esq., Captain General and Governor in Chief in and over the Province of New York and the Territory depending thereon in America, Chancellor and Vice-Admiral of the same," for the appointment of a guardian for two infants, on the 9th day of January, 1776. The new book of "Minutes" begins, as we have seen, on the 10th of June, 1785.



The Court of Chancery was not organized by the convention of representatives of the State of New York until May, 1778, although Livingston had been appointed chancellor as early as 1777. The first rules relating to the court were made by Chancellor Livingston in 1787, and are to be found in Vol. 3, Minutes of Chancery. He served until October, 1801, when he resigned upon his being appointed minister to France. I have not been able to find any of his opinions as chancellor. He was succeeded by John Lansing, Jr., who was chief justice of the Supreme Court at the time he received the appointment of chancellor. Chancellor Lansing served until October, 1814, when he was succeeded

## NEW-YORK EVENING POST.

No. 1

MONDAY, NOVEMBER 16, 1801

No. 40, Postoffice.

### PROSPECTUS\*

#### THE NEW-YORK EVENING POST.

It will afford the public to see that this Paper contains a more extensive and useful information than any other published in this city. It contains a more extensive and useful information than any other published in this city. It contains a more extensive and useful information than any other published in this city.

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#### FOR LONDON.

The express is to be sent on the 15th inst. to London, by the way of the North Sea, and will be delivered on the 15th inst. to the agents of the London Company, at the office of the London Company, at the office of the London Company.

#### COFF & WOOLLEY.

At the residence of Mr. COFF & WOOLLEY, at the residence of Mr. COFF & WOOLLEY, at the residence of Mr. COFF & WOOLLEY, at the residence of Mr. COFF & WOOLLEY, at the residence of Mr. COFF & WOOLLEY.

#### RE CALVERT.

The will of the late Mr. CALVERT, at the residence of Mr. CALVERT, at the residence of Mr. CALVERT, at the residence of Mr. CALVERT, at the residence of Mr. CALVERT.

#### FOR FREIGHT & CHARTER.

The ship "CHARLES" is to be sent on the 15th inst. to London, by the way of the North Sea, and will be delivered on the 15th inst. to the agents of the London Company, at the office of the London Company.

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by James Kent, because he was no longer eligible by reason of age. He mysteriously disappeared in 1829. He left his hotel to post a letter on board the Albany boat at the foot of Cortlandt street and never was heard of afterward. The *Evening Post* of December 24, 1829, contained the following notice of his disappearance:

On Saturday evening, 12th inst., Chancellor Lansing of Albany arrived in this city and put up at the City Hotel; he breakfasted and dined there. Shortly after dinner he returned to his room and wrote for a short time, and about the hour that persons intending to go to Albany leave the hotel, he was observed to leave his room. He has not been seen or heard of since that time. He left his trunk, cane, &c., in

\* The New York *Evening Post*, the first number of which was issued November 16, 1801, was established as a Federalist organ under the patronage of the eminent lawyers, Alexander Hamilton and John Jay. The

first editor, William Coleman, was also an able lawyer, and though the political ally and friend of Hamilton, had formerly been the law partner of Aaron Burr.



his room. His friends in this city have heard this morning from Albany that he has not returned home.

It is supposed he had written a letter and intended to put it on board the steam-boat that left here at five o'clock. He had made an engagement to take tea at six that evening with Mr. Robert Ray of this city at 29 Marketfield Street.

He was dressed in black and wore powder in his hair. He was a large, muscular man, about five feet nine inches in height, and upwards of seventy-six years of age.

He was in good health, and has never been affected by any mental aberration. Any intelligence concerning him will be gratefully acknowledged by his afflicted friends and family, if left for them at the bar of the City Hotel.

The morning papers are requested to copy this notice.

The third chancellor, Kent, was born on the 31st day of July, 1763, in what is now Putnam county, but was then Dutchess county, New York. He was graduated from Yale College in the class of 1781, studied law with Egbert Benson, and was admitted to practice as attorney in 1783 and as counsel in 1787. He was admitted as solicitor and counsel in the Court of Chancery on the 18th day of March, 1794, on the motion of Edward Livingston. The first record that I can find of him in the Court of Chancery is on the 20th day of May, 1794, when he appeared as solicitor for the complainant in the case of Cullen *against* Cullen. In 1796 he was appointed master in chancery; in 1797 recorder of the City of New York; in 1798 he succeeded Lansing as puisne judge of the Supreme Court, of which court he became chief-justice in July, 1804. It is said that he was the first of the judges in this state to write opinions. At any rate his are the earliest opinions extant. In 1814 he succeeded Lansing as chancellor, which office he filled until he reached the age of sixty years, in 1823. In 1834 he lived two or three miles from the heart of the City of New York, where he was visited by Charles Sumner, who remarked upon his frankness and simplicity, his bad grammar in conversation, his passion for reading novels, and his violent hatred of General Jackson.

He was succeeded by Nathan Sandford, who held the office for four years, when he resigned on account of ill-health. The next chancellor was Samuel Jones. Mr. Jones was a graduate of Columbia College in the class of 1790. He studied law in the office of his father, who was the reviser, and was successively member of assembly, recorder of the City of New York in 1823, chief-justice of the Superior Court of the City of New York, 1828-47, and justice of the Supreme Court of the State, 1847-9.

Chancellor Jones was succeeded by Chancellor Walworth, who was the last chancellor of the state. At Saratoga Charles Sumner met Chancellor Walworth and Judge Cowen. He said that they were both mere book men and that Judge Oakley of the Superior Court was an abler man than either. When Walworth was made chancellor he delivered an address to the bar, in which he said: "In assuming the duties of this highly responsible station, which at some future day

would have been the highest object of my ambition, permit me to say that the solicitations of my too partial friends rather than my own inclination or judgment have induced me to consent to occupy it at this time. Brought up a farmer till the age of seventeen, deprived of all the advantages of a classical education, and with a very limited knowledge of chancery law, I find myself, at the age of thirty-eight, suddenly and unexpectedly placed at the head of the justices of the state, a situation which has heretofore been filled by the most able and experienced members of the profession." This address was put into rhyme by a wit of the day, which rhyme I quote from memory :

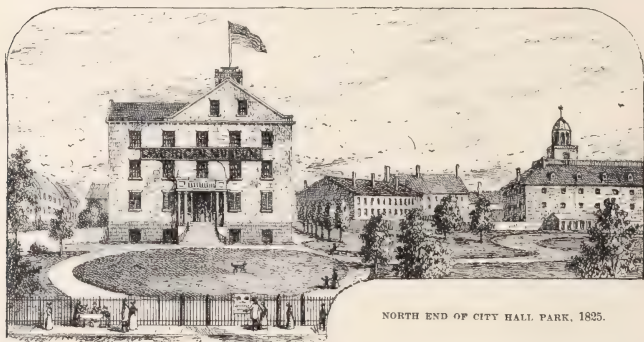
At the early age of thirty-eight  
I became chancellor of this great state ;  
That I am chancellor is clear,  
But how in Heaven got I here ?

It is said that Aaron Burr advised the chancellor not to publish his address, because, "if the people read it, they will say if you knew you were not qualified, why the devil did you take the office?" It is also said that the office was offered to all the judges of the Supreme Court and declined by them, before it was offered to Mr. Walworth. In his latter days the chancellor was a small, lean man with long, iron-gray hair and beard. Although he was a teetotaler and president of the American Temperance Union, Mr. Seward once said of him that he and another well-known New York politician could drink more brandy and water than any two other men in the State. When his attention was called to the fact that the chancellor was a teetotaler and he was asked to explain what he meant, he said the chancellor would drink the water and the other fellow the brandy. But notwithstanding the fact that the chancellor was a teetotaler, his opinion in the case of *Nevin against Ladue*, 3 Denio 437, is a very learned one on the question whether or not ale and strong beer are included in the terms strong and spirituous liquors, as used in the statute making it penal to sell such liquors at retail without a license. The opinion takes up fourteen pages of the report, and in it the learned chancellor begins at the beginning and traces beer from its earliest history to the time at which he wrote.

The chancellor was fond of tracing his descent from Walworth, the mayor of London, who had the little difficulty with Watt Tyler, in the reign of Richard II. This fact, it is said, prevented President Tyler, who claimed that he was a descendant of Watt Tyler, from appointing Chancellor Walworth justice of the Supreme Court of the United States. When President Tyler's attention was called to the fact that the chancellor claimed descent from Lord Mayor Walworth, he withdrew the chancellor's name and substituted that of Samuel Nelson, who was so many years on the bench of the Supreme Court of the United States.

The constitution of 1821 authorized the governor to nominate, and with the consent of the senate to appoint, masters and examiners in chancery, who held their offices for three years. It also authorized the chancellor to appoint a register and assistant register, who held their office during the chancellor's pleasure. It is said that in 1823 there were 510 masters in chancery in the state and 25 examiners. In 1831 the office of vice-chancellor was created in the first circuit, and in March, 1839, another in the eighth circuit, at which time an assistant vice-chancellor was also appointed in the first circuit. The office of chancellor was abolished by the constitution of 1846.

As we have seen, Jay was made chief-justice of the Supreme Court, and Yates and Hobart puisne judges thereof, in 1777. Jay remained chief-justice until 1779, when he was succeeded by Richard



Morris, who held the office for eleven years. Among others who have been chief-justices of the Supreme Court, I may mention Ambrose Spencer, Samuel Nelson, Greene C. Bronson, and Samuel Beardsley, who was chief-justice when the constitution of 1846 took effect.

For a little while we had a High Court of Admiralty in this state. On the 25th of November, 1775, the continental congress recommended the colonies to establish courts to adjudicate questions that might arise relating to captures on the seas during the War of Independence, and that all trials be by jury. On the 31st of July, 1776, Richard Morris was appointed judge of the High Court of Admiralty of this state; John McKesson, register, and Robert Benson, marshal and provost marshal. Mr. Morris declined to act as judge because his family needed all his time and attention, and on the 5th day of August following Lewis Graham was appointed in his place. A committee was named to report what fees they thought proper to be taken by the officers of the court.

Mr. Morris must have changed his mind about his family, because,

as we have seen, in 1779 he became chief justice of the Supreme Court of this state.

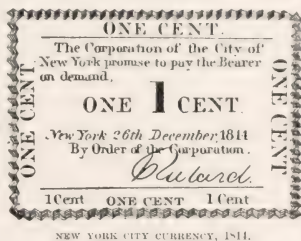
The Court of Admiralty was abolished upon the adoption of the constitution of the United States, which vested admiralty jurisdiction exclusively in the federal courts.

The Court for the Trial of Impeachments and the Correction of Errors was organized by chapter 11 of the laws of the eighth session, passed on the 23d of November, 1784. That act provided that "the court shall sit during the session of the legislature on such days and at such places as the court shall from time to time appoint; that all writs and proceedings shall be made in the name of the people of the State of New York, and attested by the president of the senate and signed by the clerk of the court; that all impeachments shall be delivered to the president of the senate, who shall thereupon immediately cause the court to be summoned, and the court shall thereupon forthwith cause the person so impeached to appear and be brought before it to answer the charge exhibited against him. On thus appearing he shall be entitled to have a copy of such impeachment, and have a reasonable time to answer the same. After issue has been joined the court shall appoint a time and place for the trial thereof." No judgment of conviction could be given unless two-thirds of the members of the court then present assented thereto. If two-thirds of the members of the court present at the time did not assent to a judgment of conviction, the person impeached was considered as acquitted from such impeachment. No judgment or sentence of conviction could extend further than disqualifying the person from ever holding any place of honor, trust, or profit in the state. A conviction or acquittal still left the person impeached subject to indictment, trial, and punishment according to the laws of the land.

The power of impeachment of officers of the state was vested in the representatives of the people in assembly. No impeachment could be ordered except with a two-thirds vote of all the members present. Any officer impeached was restrained from exercising his office until his acquittal.

That act also provided that all errors happening in the Court of Chancery, Supreme Court, the Court of Probates, and Court of Admiralty, except in cases of capture, should be redressed and corrected by the court instituted by it.

Any person against whom any judgment was given in the Supreme Court might sue forth out of the Court of Chancery a writ of error ad-



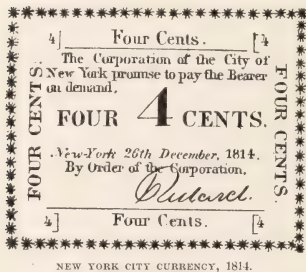


dressed to the Supreme Court, commanding them to cause the record of such judgment and all things concerning the same to be brought before the president of the senate, senators, and chancellor, and full power to examine all such errors was given to them, with power also to reverse or affirm such judgment and to give such other judgment therein as the law should require. No judgment could be entered unless a quorum of the court was present, but if such quorum was not present the case could be adjourned to some future day.

Any person aggrieved by any sentence, judgment, or order of the Court of Chancery could appeal from the same, or any part thereof, to the president of the senate for the time being, and the senators and judges of the Supreme Court, and the court had power to reverse or affirm said judgment, order, or decree, and make such other judgment, order, or decree as equity and justice required. All appeals, except those from final decrees, were required to be taken within fifteen days

next after the entry of the orders appealed from.

Any person aggrieved by any sentence, judgment, or decree of the Court of Probates or of the Court of Admiralty, except in the case of captures, could appeal from the same or any part thereof to the president of the senate for the time being, senators, chancellor, and judges of the Supreme Court, who had full power and authority to examine, hear, and determine all



NEW YORK CITY CURRENCY, 1814.

such appeals, and all matters concerning the same, and to reverse, affirm, or allow such sentence, judgment, or decree, and to make such other order or decree therein as equity and justice required. Appeals were required to be taken within fifteen days after making or giving of the sentence, judgment, order, or decree appealed from.

The act also provided that the president of the senate should have a casting vote in cases of ties, but should not vote in any other case whatever. All appeals from judgments or definitive sentences should be brought within five years and all writs of error in civil and criminal cases, not capital, should be considered writs of right and should issue as of course. In capital cases writs of error were considered writs of grace and did not issue except by order of the chancellor for the time being, made after petition and notice to the attorney-general or prosecuting officer for the state.

The Court of Exchequer was organized by an act passed February 9, 1786, which empowered the junior justice of the Supreme Court, or in his absence one of the puisne justices of the same court, to hold a court for the hearing and determination of all causes, motions, and



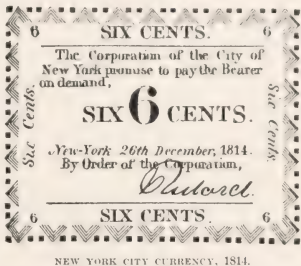
things concerning fines, forfeitures, issues, amerciaments, and debts due to the people of this state according to law and the course of the Exchequer. This court was to be held during every term of the Supreme Court or during such part thereof as should be necessary, and in some convenient place near where the said Supreme Court was sitting. The court had a seal, and a clerk who was appointed by the justices of the Supreme Court. The justice who was holding the court was not allowed to receive any fees for any services, "his salary and fees as justice of the Supreme Court being considered as full compensation for the services as aforesaid."

William Popham was appointed clerk of this court on the 17th of July, 1786, and held the office until the court was abolished on the 1st of January, 1830, as provided by the repealing act of December, 1828.

During the colonial period the governor or person administering the government granted probates. By an act passed the 16th of March, 1778, the judge of the Court of Probates was vested with all and singular the powers and authorities that the governor-general or commander-in-chief of the colony for the time being had and exercised as judge of the Prerogative Court, except as to the nomination of surrogates in the several counties, who were to be appointed by the Council of Appointment and commissioned under the Great Seal. The same act directed the judge of the Court of Probates to cause a seal of his court to be made. An act passed in 1787 authorized the appointment of surrogates in each county. The Court of Probates had appellate jurisdiction over the Surrogate's Court. It was abolished in 1833. The office of surrogate continues until the present day.

We have seen that the constitution of 1777 recognized the existence of the county courts and that certain men were appointed in that year as judges in various counties. The courts were continued by the constitution of 1821. The judges held office for a period of five years.

An interesting history of the Court of Common Pleas for the City and County of New York, and its development from the Mayor's Court of the City of New York, may be found in the preface to the first volume of E. D. Smith's Reports. From this account it appears that the mayor usually presided in the court, but from the time of Mayor DeWitt Clinton in 1805 down to 1821, the recorder sat as presiding judge of the court. An act was passed in 1821, changing the name from that of the Mayor's Court to that of the Court of Common Pleas of the City and County of New York, and creating a first judge who

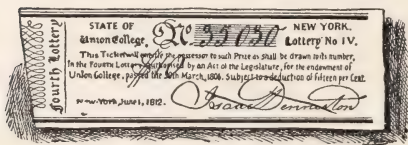


held his office during good behavior, or until he reached the age of sixty years. The second constitution, however, changed the tenure of office to five years, and gave the governor the power of appointment. John T. Irving was appointed first judge. Among those who were judges of the court prior to 1846 were Daniel P. Ingraham, who afterward became a justice of the Supreme Court, and Charles P. Daly, who to-day, after a service of nearly forty years on the bench, is still vigorously practicing law.

The Superior Court of the city of New York was established under an act passed March 31, 1828. It had the same jurisdiction as the Supreme Court in all civil causes. Its creation was brought about by the fact that it was impossible to reach a trial in the Supreme Court in less than twelve or fifteen months after the return of the process. The first chief-justice of the court was Samuel Jones, who resigned the office of chancellor to accept the office of chief-justice of the Superior Court. Josiah Ogden Hoffman and Thomas J. Oakley were the other two judges. The chief-justice and the justices were appointed by the governor with the consent of the senate, and held office for a term of five years.

Justices of the peace existed prior to the Revolution, and were continued after it by various statutes passed at different times. They were the courts nearest the people.

Chapter 44 of the third session, passed February 26, 1780, empowered



LOTTERY FOR UNION COLLEGE.<sup>1</sup>

justices of the peace, mayors, recorders, and aldermen to try cases to the value of one hundred pounds and under. It enacts that all causes, actions, and cases of debt, slander,

trespass, replevin, or for damages, where the amount demanded did not exceed the sum of £100, shall be heard before one of the justices of the peace of any of the counties, or the mayor or recorder or aldermen of the Cities of New York, Albany, and the borough of Westchester, respectively.

The defendant was required to appear forthwith, when the process was by warrant, and when by summons not less than six days nor more than twelve days were given for his appearance. The judgment was to be given within four days after the trial. If the magistrate who issued the warrant was absent, the defendant was carried before any other magistrate of the same city, town, borough, manor, precinct, or district.

<sup>1</sup> Union College realized \$284,000 by lotteries, and the College of Physicians and Surgeons \$62,000. Such schemes were common between 1799 and 1830, and

"deemed not only respectable but legitimate." Legislation after 1830 brought lotteries into disfavor.

The process against all freeholders and against all inhabitants having families was by summons only, and was served on the person of the defendant, or a copy was left at his or her house or place of abode, in the presence of some of the family of suitable age and discretion (who should be informed of the contents thereof), at least six days before the time of appearance mentioned in the summons. The constable or officer who served the summons was required to endorse upon it the manner in which he executed the same. On non-appearance and no sufficient reason assigned, the court proceeded to trial if the defendant had been personally summoned, but if the summons was left at his house, a warrant issued in case of non-appearance.

The case could be tried without appearance if the parties agreed to it. On an affidavit showing that the plaintiff was in danger of losing his demand if a summons issued, a warrant issued though the party was a freeholder. If the defendant gave security the court might adjourn the trial. A non resident plaintiff of the district, upon giving security, might have a warrant returnable immediately. Either party could demand a jury of six freeholders or freemen to try the case. The juror's oath was in the following form: "You shall well and truly try this matter in difference between A B, plaintiff, and C D, defendant, and a true verdict give according to the evidence, so help you God." The witness's oath was as follows: "The evidence which you shall give in this matter in difference between A B, plaintiff, and C D, defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God."

After hearing the proofs and allegations the jury were kept together in some convenient place until they had agreed upon a verdict. When they had agreed they delivered it into court, which gave judgment thereupon. No oath of the parties or *ex parte* affidavit was admitted in evidence unless the parties consented thereto. Every person summoned and drawn as a juror or subpoenaed as a witness, who did not appear, or appearing refused to serve, or give any evidence in such action, forfeited such fine or fines, not exceeding the sum of forty pounds nor less than ten pounds, in the discretion of the court. These fines were applied to the use of the poor of the place where levied.

If the plaintiff in any such action was non-suited, or discontinued, or withdrew his action without the consent of the defendant, judgment was given against the plaintiff for the costs accrued, and if he appeared to be indebted to the defendant, judgment was given against the plaintiff for the amount of his debt or demand, and costs.

Execution in case of judgment issued to the constable to levy on the debtor's goods, and for want thereof to take the debtor's body. No execution could issue against a freeholder in less than thirty days after judgment, unless on proof of danger of losing the debt.

It was also provided by section 8 that if any plaintiff should commence or prosecute any of the actions mentioned in the act, in any

other manner than as directed by the act, and should obtain a judgment thereon, which without costs should not amount to more than £100, not having caused an oath or affirmation to be made before obtaining the writ and filing the same in the clerk's office, that the person making the oath or affirmation did truly believe the debt due or damages sustained exceeded £100, should not recover any costs in such action.

This provision did not extend to suits in the name of the people, or where titles to land came in question, or actions for slander. It also provided that the act should extend to matters of account where the sum total of the account exceeded the sum of £400.

The act also provided that no justice of the peace, being a tavern-keeper, should try any action in his own house.

In actions of trespass on plea of title the defendant was required to enter into a recognizance, and to prosecute and make good his title in manner as directed by a law of the Colony of New York entitled "An act for preventing trespass, passed May 6th, 1699," otherwise the magistrate was directed to hear and determine the cause as if no such plea had been made.

The cost for a summons was sixteen shillings; a warrant, twenty shillings; a judgment, twenty shillings; administering every oath or affirmation, ten shillings; execution, thirty shillings; subpœna for each witness, ten shillings; *venire facias* to summon a jury, twenty shillings; swearing a jury, thirty shillings; witness attending on summons or otherwise, forty shillings per day, and so in proportion for a longer time; constable or other proper officer for serving summons, subpœna, or other execution, for each mile travelled or under, twenty shillings, and for every extra mile ten shillings; serving every execution for every pound, one shilling; and summoning every jury, sixty shillings. Jurors received twenty shillings per man for each case tried, and when attending and not serving ten shillings per man.

The costs seem large to us, but there was a provision in the act that the costs should not exceed in any one case the sum of £40.

No *certiorari* or writ of error could be issued unless an affidavit showing reasonable cause was presented to the justice within one month after judgment. A copy of such affidavit was given to the adverse party when required. Upon the affirmance or reversal of the judgment the prevailing party was awarded costs. The Supreme Court was directed to order the attorney-general to prosecute magistrates guilty of unjust practices. This act was to remain in force until March, 1781.

Chapter 9 of the Laws of 1780, which was passed at the fourth session, reduced the jurisdiction of the justices of the peace and the other officers mentioned in chapter 44, above referred to, to the cognizance of cases to the value of £10 only. The fees were reduced to one-twelfth part of their nominal value as expressed in said act, and it was further ordained that upon all executions to be issued in consequence of judgments in any court, in pursuance of said act



after the passage thereof, money should be received at the following and no other rates : Silver at the rate of eight shillings for a Spanish milled dollar, and gold and other coins in the like proportion at the rates they usually pass ; new bills emitted upon the credit of this state pursuant to the act of congress of the 18th of March preceeding at their respective nominal value, and every other species of paper currency emitted by the authority of congress, or of the late Colony of New York, or this state, at one-fortieth part of the nominal value thereof, or at the rate of two pence and two fifths of a pence for each dollar, or eight shillings expressed on the face of each bill.

The chief law officer of the state is the attorney-general. Egbert Benson was the first one appointed under the constitution of 1777 which recognized the office as then existing. It was the duty of the attorney-general, among other things, to prosecute all criminals. The state grew so fast, however, after the end of the war, that the attorney-general was not able to conduct all of the criminal prosecution, and the office of assistant-attorney-general was created in order to relieve him. The state was divided into districts, and an assistant-attorney-general was appointed in each district, and was directed to conduct the prosecution for all crimes cognizable by the Courts of Oyer and Terminer, jail delivery, and General Sessions of the Peace. The attorney-general was appointed by the Council of Appointment under the first constitution, but under the second he was appointed by the senate and assembly.



BRIDEWELL, CITY HALL PARK.

Some of the most eminent men in the state have held the office. Benson was succeeded by Richard Varick, and Richard Varick by Aaron Burr. Josiah Ogden Hoffman was attorney-general in 1795, and Ambrose Spencer, afterward chief-justice of the state, in 1802. Martin Van Buren, Thomas J. Oakley, Greene C. Bronson, Samuel Beardsley, and John Van Buren were also attorney-generals prior to the constitution of 1846.

By a law passed in April, 1818, each county became entitled to a district-attorney. The second constitution authorized the Court of General Sessions in each county to appoint district-attorneys.

Sheriffs were appointed under the first constitution by the Council of Appointment, and no person could hold the position for a longer period than four years, and could not hold any other office while he was sheriff. Under the constitution of 1821 sheriffs were elected for a term of three years.

Many innovations and changes in the common and statute



law of Great Britain were made by the early legislatures of the state.

Trials by battle were abolished by chapter 7 of the ninth session, passed February 6, 1786. The preamble to this act recites that "Whereas, formerly trials upon writs of right were by battle or the Grand Assize; and whereas, the barbarious custom hath deservedly fallen into disuse but hath never been abrogated by law; and whereas, by the institution of the trial by the Grand Assize, four knights are to be summoned to elect the recognitors; and whereas, there is nor can not by law be any such order of men in this state." It is worthy of notice in this connection that trial by wager of battle was not abolished in England until after the trial of the celebrated case of *Ashford against Thornton*, 1 Barnwell and Adolphus 405, which was decided in 1818, which case called the attention of Parliament to the fact that this relic of another age was still part of the common law of England, and the next year it was abolished.

Chapter 19 of the first session abolished the punishment of the *peine forte et dure*. Chapter 69 of the tenth session, passed March 30, 1787, is the first act relating to actions of divorce passed in this

state. Its preamble recites that the laws respecting adultery are very defective, and that applications having in consequence been made to the legislature praying their interposition, it is thought more advisable for the legislature to make some general provisions in such cases than to offer relief to individuals upon their partial representations without a just and constitutional trial of the facts. It related only to absolute divorces, which were allowed for adultery only, and provided that it should not be lawful for a party convicted of adultery to remarry again until the other party was actually dead. It gave the Court of Chancery jurisdiction of the cause. It was immediately made use of, for I find that within one year



TONTINE COFFEE HOUSE, CORNER  
WALL AND WATER STREETS.

four actions of divorce were pending in the Court of Chancery. That court, however, appears to have had jurisdiction in certain kinds of actions for divorce, for a decree was entered in the case of *Elizabeth Pugsley against Israel Pugsley* on the 2d of April, 1772, which decree provided that the defendant should pay to Lewis Morris, the next friend of the complainant, for her use, the sum of £20 current money of the province yearly during the joint lives of the parties to the cause, or until they should agree to live together again, and also that he pay the costs of the action. This same *Israel Pugsley* was again before the Court of Chancery on the 22d day of May, 1793, when he was, on the petition of his wife, *Elizabeth Pugsley*, adjudicated a lunatic.

## CONSTITUTIONAL AND RELATED ASPECTS, FROM 1801 TO THE CONSTITUTION OF 1894.<sup>1</sup>



NY outline of the constitutional history of New York in the nineteenth century involves primarily the consideration of several great public movements, culminating in the constitutional conventions of 1821 and 1846. Each of the constitutions presented by these several conventions led to very radical changes in the substantive law or procedure of the State. The constitution of 1821 was followed by a notable revision of the fundamental law of New York, which exercised much influence also on the laws of other States; while the constitution of 1846 was followed by the overthrow of the ancient judicial establishment of New York, and by drastic reforms of the inherited and antiquated procedure in use for several centuries in the courts of justice of New York. Both constitutions were in the direction of more liberal institutions, and were intended to confer upon the people of the State greater political powers and privileges than had ever before been granted to them.

The constitution of 1777<sup>2</sup> had a variety of defects; two of these led

<sup>1</sup> In the original scheme of this work it was intended that the preceding historical articles should be followed by a third on similar lines, to be prepared by the Honorable Austin Abbott. Mr. Abbott's death prevented the carrying out of that plan. This article, by Robert Ludlow Fowler, Esq., is reproduced from Vol. III. of the "Memorial History of New York." Editor.

<sup>2</sup> The first constitution of the State of New York was framed pursuant to a resolution of the continental congress, May 10, 1776 recommending that those colonies which were without a sufficient form of government should adopt some suitable organization. A "Convention of the Representatives of the State of New York" accordingly assembled at White Plains, July 9, 1776. It appointed a committee to take into consideration a plan for instituting and framing a State government. The resulting constitution—of which John Jay is regarded as the principal author—was adopted by the convention then sitting at Kingston, April 20, 1777. This instrument became the supreme law of the State without any further formality. It was not submitted to the vote of the people at large. Although it was strictly a product of the Revolution, to meet the changed circumstances brought about by that great event, it was remarkably conservative in its general provisions. While the first section declared that "No authority shall, on any pretense whatever, be exercised over the people or members of this State, but such as shall be derived from and granted by them," the constitution was far from in-

stituting violent democratic innovations. The suffrage was restricted to freeholders in the province and to freeholders of New York City and Albany. As an illustration of the workings of this restriction, in the year 1790 only 1,303 of the 13,330 male residents in New York City possessed sufficient property to be entitled to vote for State senators. In order to limit the legislative powers of the people's representatives a "council of revision" was constituted, consisting of the governor, chancellor, and Supreme Court judges, or any two of them acting with the governor, and a vote of two-thirds of both houses was required to override the council's veto. The office of governor retained much of its aristocratic character. It was required that the governor should be a freeholder, and only citizens possessing freeholds of the value of £100 were authorized to vote for governor. All officers except the governor and lieutenant-governor were made appointive, and were to be selected by a council of appointment composed of the governor and a council of senators chosen by the assembly. The only change made in the organization of the judiciary was the creation of one new tribunal, the Court for the Trial of Impeachments and the Correction of Errors. Both the Supreme Court and the Court of Chancery were left entirely undisturbed, notwithstanding that they owed their origin to ordinances of the royal governors, issued in opposition to the wishes of the popular assembly. But the legislature was forbidden to institute any new courts "but such as shall proceed according to the

to the constitutional convention elected in the year 1801. The constitution of 1777 had omitted all directions for its amendment; but on the theory that all political authority emanated from the people, the legislature in 1801, by a referendum act, recommended a convention to consider two changes. One of these was made necessary by the embarrassing ratio in which the senate and assembly were augmenting with the population, and the other by a notorious conflict which had arisen between the governor and the other members of the council of appointment concerning the governor's exclusive right of nominating to certain public offices under the provisions of the constitution of 1777.

The delegates accordingly elected by the suffragists met at Albany, October 13, 1801, and chose Aaron Burr, a delegate for Orange County, chairman. The ultimate number of members of assembly was for the future restricted to one hundred and fifty, and the number of senators to thirty-two. The right to nominate to office under the 23d section of the constitution of 1777 was declared to be vested concurrently in the governor and in each of the members of the council of appointment. The change made in the appointing power by this construction of the constitution deprived the office of governor of the State of much of its existing influence, and led to a perpetual struggle of the politicians for the control of the council of appointment. It introduced no real reform, and led only to the conviction that the appointing power was more safely lodged in the hands of the executive than in the hands of a counsel or committee.

In reading the accepted version of the political history of the State of New York, one might infer that the entire period between 1777 and 1821, the date of the second constitution, was devoted to a constant and petty struggle for political place, and that no lofty public measures received or demanded the attention of the leaders of the political parties of the State. Yet such an inference is not wholly verifiable. During this entire period there was great popular dissatisfaction with those provisions of the State constitution of 1777 which related to the property qualifications for electors, and with other provisions which vested such transcendent political powers in the judges of the great courts of record. The popular dissatisfaction for some time took the usual form of protests in the newspapers of the day.

course of the common law." A trial of secret voting by ballot was provided for, but with the proviso that if it should prove a failure the old *visa voce* method should be resumed. The law of the State was established by a declaration that it should consist of "such parts of the common law of England and of the statute law of England and Great Britain, and of the acts of the Legislature of the Colony of New York, as together did form the law of the said colony on the 19th day April, 1775," subject to such alterations and provisions as the legislature of the State should make concerning the same. Notwithstanding, however, the generally conservative

character of the constitution of 1777, "the new form of government of New York contained several features new to the history of political societies—absolute religious toleration and the declaration, rather than the realization, of a complete popular supremacy, absolutely unalloyed with differences in status, for no mention was made of African slavery in the constitution, and its total abolition was evidently contemplated by the founders of the new State." (See Mr. Fowler's article, "Constitutional and Legal History of New York in the Eighteenth Century," "Memorial History of New York," Vol. II., chapter xiv. EDITOR.

But in August, 1820, Tammany Hall, as the organized representative of the dissatisfied element of the population, initiated a movement for a convention to amend the State constitution. The subsequent legislative bill providing for the convention promptly met with the disapprobation of a majority of the council of revision, who vetoed it, Chancellor Kent writing the opinion of the council with all the conservatism of a trained lawyer. No veto in the history of the State has met with greater censure than this action of the council of revision. The council was openly accused of wishing to defeat the will of the people, and of conspiring to retain the State in the hands of the lawyers and landholders who, from its foundation, had carefully guided its political fortunes. The report of Michael Ulshoeffer, chairman of the select committee of the assembly, combated the logic of the veto with great vigor, and is regarded as the abler State paper of the two.<sup>1</sup> A bill was finally so drawn in March, 1821, as to meet the main objection of the veto by the council of revision. It submitted the question of holding a constitutional convention to the decision of the electors of the State. The electors having decided in the affirmative by a vote of 109,346 to 34,901, delegates were next chosen, who met at Albany in August, 1821. Before considering the changes accomplished by the convention, it will be in order to survey the forms to which some of the leading institutions had then attained.

The judicial establishment of New York was never more efficient than in the first twenty-one years of the present century. It was still substantially the provincial establishment erected by the English, and continued by virtue of the recognition accorded to it in the first State constitution, adopted in 1777. Under this constitution the Supreme Court of Judicature, as originally established in 1691, continued on its ancient footing. But the influence of the court increased much with the growth of population and affairs, and this was followed naturally by the publication of a regular series of printed law reports. The elevation of James Kent to the Supreme Court bench in 1798, and his interest in the law reports, did much to place this ancient court on a more influential basis. Under the judgeships of three great judges—Kent, Thompson, and Ambrose Spencer—the court was very excellently administered, and many legal principles were settled; while fluctuating theories gave place to determinate and known rules of law, reported in the famous series of leading cases by Caine and Johnson, the official Supreme Court reporters. The Supreme Court justices still went the circuit when the regular terms of the court *in banc* were not in session in Albany, Utica, or New York. As a law court the Supreme Court of New York may have been surpassed by several of the law courts of other States, whose influence on American law has been, no doubt, more profound. But it was otherwise in respect of the Court of Chancery.

<sup>1</sup> See this paper in Street's "N. Y. Council of Revision," 455.



In the year 1814, James Kent was translated from the chief-justiceship of the Supreme Court to the Court of Chancery. From a common-law judgeship he passed to the "throne of equity." In the same year, Johnson, the Supreme Court reporter, was directed by the legislature to report the decisions of the chancellor. With this event begins the most brilliant period of the New York Court of Chancery. Livingston, the first chancellor under the State government, had been an able judge, a great diplomat, and a sagacious figure in political life, but his judicial work is not known, as his opinions have remained unpublished. Only his legal opinions in the council of revision, and a few rules of court, as yet mark his term of office as chancellor. Of Chancellor Lansing's administration more is known, for he promulgated seventy-four chancery rules, or standing orders in chancery, which are called by jurists the equivalents of edicts or direct legislation, and are recognized as powerful factors in the administration of government. Some of these rules were an improvement on the contemporary English equity practice. Chancellor Lansing's career also labors under the disadvantage of having had no reporter. But with Lansing's successor, Chancellor Kent, it is otherwise: from the very beginning of his judicial life he was attended by the reporters, and the precise value of his labors to the State and nation is approximately ascertainable. Chancellor Kent had, at the threshold of his career, perceived that to an American lawyer of his day two great and living problems were presented for solution: the relations of the common law of the older country to the new republic, and the relations of the judicature branch of government to the legislative and executive branches in a composite or federal state. In 1794, as professor of law in Columbia College, he had addressed himself tentatively to the latter proposition. In 1795 he published a small volume of dissertations preliminary to a proposed course of lectures on the common law. But the lectures failed to attract hearers, and were discontinued. At a long subsequent period, and in his retirement, he gave to the public his "Commentaries on American Law," which throughout the United States became a recognized institutional treatise, as celebrated in its way as Blackstone's "Commentaries on the Laws of England" had been in its way. In the New York Court of Chancery, Kent found an instrument which he at least knew how to use. He was profoundly impressed with the traditions and dignity of the ancient prototype of his court, the High Court of Chancery in England. No one could be more mindful of the fact that in England the chancellors had exercised legislative functions similar to those which the Roman pretors discharged in the development of the civil law. But Kent had no disposition to innovate. His was an eminently practical mind, and in the year follow-



ing his elevation to the chancery he stated that he would follow the English chancellors' conceptions of equity, and would undertake no innovations, which he regarded as very dangerous.<sup>1</sup> In thus limiting his extended judicial powers, he, perhaps, denied himself an opportunity of expressing his own conceptions of equity, and of taking an original place in the very front rank of English-speaking chancellors. He was content to serve as an expounder and commentator of Anglo-American law: thus he contributed little that was original to those fundamental canons of English equity which comprise the perpetual edict of that system, and which were practically completed in England by his contemporary, Lord Eldon. In this respect Kent's present influence differs from the influence, for example, of such an American jurist as Marshall, who possessed an original and creative intellect of the highest order, and whose judgments must always be sensible on this continent in the region of political law and philosophy. In thus treading in the footsteps of the English chancellors, Kent did not, as we shall see, escape the responsibilities which the anomalies incident in New York to his office made inevitable; for the recipient of such great political powers could not hope to elude criticism under a republican form of government. Nor can it be said that those who, in the convention of 1821, criticized the abnormal power intrusted to a chancellor of this State, were wholly without justification. In addition to exercising the law powers of a chancellor under the former English system, the chancellor of New York, by virtue of his office, sat in the court of last resort, and, though he could not vote, might argue in support of his own judgment below. He was also one of those who possessed in the council of revision a qualified veto on all legislation under the first constitution. This was an abnormal and tremendous power for a judge. These powers, which it is proper to say Kent had not sought, nor even helped to confer, he exercised without fear, in the old-fashioned federal and professional manner, very exasperating to the newer school of republican lawyers, who would not defer so profoundly to the legal system of England. Thus, toward the year 1821, Kent, in the minds of his opponents, was the leading representative of the hated and influential survival of what they believed ought to have been purely ante-revolutionary traditions, having little application to the conditions of American life under the republic. His opponents deprecated the chancery conceptions of a "throne of equity." Indeed, the whole idea of a chancellor, they said, was associated with a kingship: a chancellor without a king was almost as inconsistent as a king without a chancellor. The entire chancery establishment came in for condemnation because it fostered a class of officials and prac-

<sup>1</sup> 1 Johnson's Chancery, 530.

tioners whose exclusiveness was distasteful to the population of the newer and growing parts of the State. Thus, side by side with Chancellor Kent's practical, conservative, and just administration of the Court of Chancery, were growing up the seeds of discontent in the minds of the more independent and emancipated political thinkers. This discontent culminated in the constitutional convention of 1821, when Kent had been only seven years chancellor of New York.

In addition to the great courts mentioned, there were in the year 1821 the Court of Errors and the Court of Probates, already noticed. The Court of Errors, it will be recalled, consisted of the senators, the chancellor, and the judges of the Supreme Court.<sup>1</sup> In 1787 a ministerial part of the jurisdiction of the Court of Probates had, by an act of the legislature, devolved upon certain officers termed surrogates. The Court of Admiralty had expired when the admiralty jurisdiction had been called into being by the federal constitution of the general government. The minor courts of the State remained in 1821 substantially as before the Revolution.

Before noticing the changes wrought by the new constitution, let us glance again at the condition of the State of New York about the time of the convention of 1821. In 1808 the number of freeholders entitled to vote for senator and governor was 36,500, and in 1820, despite the increase in population, the number of freeholders qualified to vote for the great officers of the State had not increased in a like ratio with the population. This was felt to be a grievance by the people at large. In 1820 the major part of the inhabitants were still engaged in agriculture, and the rural districts were increasing in population at a greater ratio than the urban communities. In 1812, twelve new counties had been carved out of the one great county theretofore lying west of Seneca Lake. In 1820 the sixteen counties in the State of the year 1790 had become fifty-five counties, embracing five incorporated cities and six hundred and sixty-two boroughs or towns.<sup>2</sup> After the peace with England in 1783 the western territory, or that great country west of the 80th meridian, had attracted large numbers of settlers. One of the routes to the Ohio country from New England was through central New York, and many men of New England birth either stopped on their way to the far West, or settled in New York, finding certain advantages or attractions in the then wild parts of this State. Thus, central, western, and northern New York soon began to have the political tone of New England.<sup>3</sup> These men of New England entertained very different conceptions of government from those embodied in the State constitution of 1777 by the old land-owning and lawyer classes of the prov-

<sup>1</sup> "Memorial History of New York," Volume II.

<sup>2</sup> Spofford's "Gazetteer," p. 691.

<sup>3</sup> "Gazetteer of Western Continent for 1810:" title, "New York."

ince of New York. Thus it happened that the exponents of the new parts of the State—men of the old-fashioned Puritan names—were, in the constitutional convention of 1821, as a rule, found in the party of reform, and not in the ranks of the more conservative and native element of the State.

As late as 1820 the more populous districts of the State existed in the two oblongs anciently settled,—extending, the one down Long Island and the other up the Hudson River,—and there the inhabitants were mainly of the old provincial type. In Kings, Ulster, Albany, and parts of Orange County might still be heard the Low Dutch of the seventeenth century, although, from the want of Dutch schools and the preponderance of people of English stock, the use of the language of the first European settlers had greatly diminished. But in the ancient districts Dutch and English names were still found in most families curiously combined, denoting that the social condition had followed the political transitions of the province, and that the race of the conqueror had blended with that of the conquered. The population in these districts was still largely native. Franklin pointed out that even at the time of the war of independence the inhabitants of all the American colonies were largely natives, and descended from those who had emigrated from Europe prior to the year 1700. The fact that the population of New York State was largely native in 1820 is corroborated by the statistics of the city of New York in 1820, when, out of a total population of 123,706, but 5390 of the inhabitants of that city appear to be classed as unnaturalized foreigners. Indeed, in 1820 the population of the whole State was mainly composed of native Americans, and, as stated, the major part were engaged in agricultural pursuits.

The great city which now stands rather for North America than for the State of New York, and which is fast outgrowing its traditions as an ancient capital of an ancient province, had increased from 80,000 inhabitants in 1808 to 123,706 in 1820. From the year 1756 to the year 1790 the general progress of the city in population and resources was much like that of other American cities. But after 1790 it became evident that New York was, for a long time at least, to lead other American cities.<sup>1</sup> Yet for some years after the constitutional convention of 1821 the affairs of this city were conducted mainly under the royal charter known as the Montgomerie Charter of 1730.<sup>2</sup> As late as 1827 General Dix noticed the fact that in New York city "the Dutch families by which the first settlement was formed were still represented in their descendants, who constituted a considerable proportion of the whole number of inhabitants,"<sup>3</sup> but he admitted "that

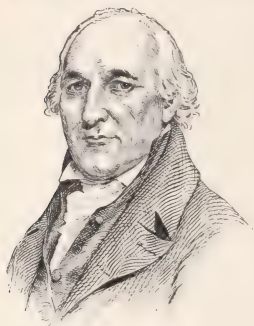
<sup>1</sup> Dix's "Resources of the City of New York in 1827."

<sup>2</sup> "Memorial History," Volume II.

<sup>3</sup> "Resources of the City of New York," p. 38.

the descendants of the English families who established themselves during its colonial dependence on Great Britain" were then much more numerous.

Such, then, were some of the conditions prevailing in New York at the time of the constitutional convention of 1821—a population



*And Kirkpatrick.*<sup>1</sup>

composed largely of native Americans, whose pursuits were in the main agricultural. No body of aliens had yet become so formidable or consolidated as to constitute a known and separate political organization, generated and led by professional political headmen of their own race. The conditions of commerce were still largely primitive in character: the Erie Canal had not been completed; steam navigation was yet in its infancy; the telegraph and the railroad were unknown; while postal circuits were made over the common turnpikes and waterways of the State. Yet the material conditions of life were relatively those of a highly civilized

State, and not very dissimilar to the conditions in the civilized States of the older world. New York had already been settled for two centuries.

When the constitutional convention met at Albany, August 28, 1821, the delegates were fairly representative of both the reformers and the conservative party in the State. The older counties sent their most distinguished lawyers and the landholders representing their traditions. From Albany and the older counties came Chancellor Kent, the Jays, and the Livingstons; from New York County came, among others, Nathan Sandford, Ogden Edwards, Henry Wheaton, and Jacob Radcliff. From the newer counties were sent such men as Jarvis Pike, Nathan Carver, Victory Birdseye, Micah Brooks, Jason Fenton, and General Erastus Root. Among the other notable members of the convention were Daniel D. Tompkins and Martin Van Buren. From the fact that Daniel D. Tompkins, "the favorite farmer's son," as he was then called, was elected chairman of the convention, it was soon evident that the Democrats were in the majority, and that the new constitution was to be made more democratic in principle than the

<sup>1</sup> Andrew Kirkpatrick was born February 17, 1756, and graduated at Princeton. He studied law, was admitted to the bar in 1785, and practised successfully. In 1797 he was a member of the New Jersey legislature, soon resigning to become judge of the State Supreme Court. In 1803 he was made

chief justice of the State, which office he held for twenty-one years. He married Jane, eldest daughter of Colonel John Bayard, and died in New Brunswick, N. J., January 7, 1831. (*Vide* a privately printed address on the chief justice, by General Wilson, New-York, 1870.) EDITOR.



old one had been. The debates in the convention show clearly that the primacy of the old judicial establishment, with its abnormal political power and the qualified electoral franchise erected on a basis of landed interest, in conformity to the former Anglican institutions of the province, were the main points of attack by the reformers. Incidentally the justices of the Supreme Court, and even the distinguished chancellor, were virtually put on trial by the convention. They were made the manifest victims of an organization which had confused the coördinate departments of government, and their explanations in convention were generally prefaced by apologetic and painful explanations due to their unfortunate position. In this regard the spectacle of the convention was a triumph of democracy over the upholders of ancient institutions. Sometimes the debates became virulent. The chancellor was likened to "the Bohun Upas of Java, that destroyed whatever sought for shelter or protection in its shade." Even his reporter, Johnson, with his "big and little" books, was ridiculed. Chief Justice Spencer, in some respects the ablest common-law judge in the State, was contemptuously told "that he might have been a Holt or a Mansfield had he kept from the political arena." It was evident that the people were impatient with the veto power vested in the council of revision, which, it will be remembered, consisted of the governor, the judges of the Supreme Court, and the chancellor. The judiciary had thus been dragged into every political measure of importance, and the consequent torrent of popular denunciation had much diminished their usefulness. Thus, Kent and Spencer, whom we now regard as the high priests of the ancient system of law, were at the end of their judicial careers made the victims of the Anglican institutions of a former century, of which they were the stoutest upholders. It may well be doubted whether the chancellor and the judges were wise in attending the convention as delegates. They knew that their power was to be broken; they were there making stately defenses of their past, and to save the remnant of former institutions, when neither needed extenuation. The convention finally decided to make a new constitution, as the old was deemed past amending. The council of revision was abandoned, and after the fullest deliberation a limited veto power was transferred to the governor. The council of appointment, which then appointed 709 officers in the city of New York alone, next shared the fate of the council of revision. A great number of minor offices were made elective.<sup>1</sup> Justices of the peace were to be appointed by the boards of supervisors and the county judges.<sup>2</sup> The appointment of the higher judicial officers was vested in the governor, with the consent

<sup>1</sup> Constitution of 1821. Art. IV.

<sup>2</sup> In 1826 an amendment made the justices elective.



of the senate.<sup>1</sup> The appointment of secretary of state, comptroller, treasurer, attorney-general,<sup>2</sup> surveyor-general, and commissary was vested in the senate and assembly on joint ballot. All officers holding their offices during good behavior might be removed by joint resolution of the two houses of the legislature. The term of office of governor having been invested with some part of the former powers of the several councils of revision and appointment, was abridged from three to two years in order to insure a greater responsibility to the electors.

The debates in the convention on the electoral franchise were spirited, exhaustive, and really instructive. With the most advanced thinkers on this subject stood Peter R. Livingston of Dutchess County. He allied himself to the tenant-farmers, who were largely for reform, and opposed General Van Rensselaer and Chancellor Kent, who stood openly by the ancient traditions of a superior landed interest, and who were at least for the survival of an upper legislative house which should represent the more exclusive body of freeholders. All recognized that some extension of the franchise was inevitable, and the more conservative fought to retain the provisions of the old constitution which divided the electors into two classes according to property interest. The debates afford curious evidences of the survival of ancient institutions, and the frequent use of such words as "yeomanry" and "landed interest" denotes that the legacies and traditions of a former century were hard to extinguish even under the republic. General Van Rensselaer placed his objections to universal suffrage on the ground that the influence of the city of New York would be augmented at the expense of the ancient and long-settled rural districts. Other opponents placed them on the more subtle ground of experience, which they affirmed had demonstrated that universal suffrage gave an undue control to the plutocracy of wealthy manufacturers and other employers of labor. The convention finally enlarged the basis of the franchise. Freeholds no longer qualified. Every white male resident taxpayer, militiaman, fireman, and laborer on the public highways, of full age, was to have a vote for all elective officers.<sup>3</sup> Men of color only were disfranchised, unless they were freeholders and for three years citizens of the State. Singularly enough, the most radical upholders of universal suffrage appear to have been the opponents of the negroes, whose true friends were found in the ranks of the old land-holding and legal aristocracy of the State.

<sup>1</sup> Constitution of 1821, Art. IV, Sec. 7.

<sup>2</sup> Under an act of February 12, 1796, seven assistant attorney-generals were appointed by the governor and council of appointment during pleasure. The attorney-general officiated personally in New York County. The office of district attorney was created April 4, 1801. By a law

passed April 21, 1818, each county was erected into a separate district. Under the second constitution the district attorneys were appointed by the Court of General Sessions in each county. See Memorial History, Volume II., Chapter XIV.

<sup>3</sup> In 1826 most barriers were removed, and white manhood suffrage made practically universal.

The most interesting chapter in the history of the convention relates to the judicial establishment, which we have seen owed its existence to the former royal government, and its continuance to the conservatism of those who had framed the constitution of 1777. In the year 1821, the Supreme Court of Judicature consisted of Chief Justice Spencer and three associate justices, who were, as we see them now, all able common-law lawyers, but perhaps not free from the peculiar formalism of the old English law administered by them. Their political attitude and their labors in the council of revision had undoubtedly made them very obnoxious to the people, and had brought even their judicial work, which was of the highest order, into great and unmerited disrepute. The new constitution vacated all judicial offices after December 1, 1822, and thus assured a new common-law judiciary. Various proposals were made in convention to transfer the entire equity powers of the chancellor to the Supreme Court, and to render the court more popular and accessible; but this reform was postponed.

The changes effected in the judicial establishment were not great. The powers of the judges of the great courts were somewhat circumscribed, and the judges themselves were removed out of the immediate realm of politics by the destruction of the council of revision. They were retained as members of the old Court of Errors, consisting of the senators and the higher judiciary, as before, though the senate was rendered much more democratic by the practical abolition of the former property qualification required of the electors for senators. Some slight change was made in the procedure of the court when sitting as a court for the trial of impeachments. The powers of the Supreme Court justices were further circumscribed, as it was supposed, by taking away from them the duty of going the circuit, which it was asserted had been often made a political tour whereby the authority and majesty of the law had been perverted to partizan uses. The circuit and chamber duty of Supreme Court justices was transferred to a new class of circuit judges, who might also be invested by the legislature with an original equity jurisdiction.<sup>1</sup> Thus relieved of circuit duties, the Supreme Court was reduced to three justices, consisting of a chief justice and two associates, who were to hold office, as before, during good behavior or until sixty years of age, though they might be removed by joint resolution of the two houses of the legislature. Although the Court of Chancery was not destroyed, Chancellor Kent's term of office was not extended, and was left to expire in a few months, or when he reached sixty years of age,<sup>2</sup> which hap-

<sup>1</sup> Constitution of 1821, Art. V.

<sup>2</sup> The same limitation was contained in the constitution of 1777. It was inserted at the instance of the lawyers, who had been plagued

through the senile infirmities of Chief Justice Horsmanden, one of the last of the crown judges, and for some thirty years on the bench.

pened in a short space.<sup>1</sup> It was proposed in the convention to abolish this court and transfer its powers to the law courts, but the time was not deemed opportune. Under the authority of the constitution, which authorized the legislature to vest equity powers in the common-law judges,<sup>2</sup> very considerable changes in the organization of the court were, however, soon introduced in practice. It was thought that this measure would lessen or popularize the power of the chancellors. But the chancellors soon demonstrated the fallacy of this opinion,<sup>3</sup> claiming that their judicial powers were beyond the control of the legislature. The measure, however, did demonstrate the feasibility of merging legal and equitable powers in the same judicial officer, and under the succeeding constitution it led to very extended reforms of a like nature.

The new constitution of 1821<sup>4</sup> made a slight alteration in the declaration concerning the future law of the State. The original constitution had continued a part of the statute law of England as the law of New York. The legislature, having consolidated all the English statute law in a general revision, had repealed in 1788 the residue, and so the new constitution, unlike the first, made no reference to the English statutes, but declared "such parts of the Common Law and of the acts of the legislature of the Colony of New York as together did form the law of the said Colony on the 19th day of April, 1775, and the resolutions of the Congress of the Colony and of the Convention of the State of New York in force on the 20th day of April, 1777, which had not since expired, or been repealed, or altered, and such acts of the legislature of this State as were then in force, should be and continue the law of this State, subject to such alteration as the legislature should make concerning the same." All parts repugnant to the new constitution were excepted.

The other changes wrought by the constitution of 1821 were in the main subordinate to those indicated. The Bill of Rights sections were amplified in conformity to the amendments to the federal constitution. One section, growing out of a famous case, was, however, entirely new.<sup>5</sup> It provided that, in all prosecutions for libel, the truth might be given in evidence; and if it should appear to the jury that the matter charged as libelous was true, and published with good motive and for justifiable ends, the party should be acquitted. The

<sup>1</sup> When Chancellor Kent left the bench he was overwhelmed with attention by the bar, and various memorials and tributes were addressed to him. He had been a faithful, learned, and diligent judge, and reflected great honor on the State. But he was not in strict accord with the more advanced democratic notions of popular government; and when he refused even to sign in the

convention so moderate a reform as the constitution of 1821, he was consistent.

<sup>2</sup> Art. V, Sec. 5.      3 2 Paige, 95.

<sup>4</sup> The constitution of 1821 came into full force and effect on the 1st day of January, 1823, but the convention was chosen in 1821, and entered upon its duties in August of that year.

<sup>5</sup> Art. VII, Sec. 8.

jury were to have the right to determine the law and the fact in such cases. The history of this section was intimately associated with the trial of Crosswell, indicted in 1803 for libeling Thomas Jefferson, then president of the United States. On the trial, Chief Justice Lewis had charged the jury that they were to pass only on the publication of the libel and the truth of the innuendoes, other questions being reserved to the court. Alexander Hamilton, in the motion in arrest of judgment, was said to have made the greatest argument of his life, thus vividly recalling the trial of Zenger, and the argument by another great advocate of the same name, in the same court, in the year 1735. The court *in banc* being divided in Crosswell's case, a bill was introduced in the legislature in 1805, by William W. Van Ness, settling the law on this point. The purport of this act was now thought important enough to be fixed more securely by constitutional enactment.



In January, 1822, the people ratified the new constitution by a vote of 75,422 to 41,497 for the constitution, and in favor of a change in the nature of the original State government of New York. By the contemporaries of this measure it was esteemed a revolution; but as we see it now it was but a conservative step forward in the march of more democratical institutions. The changes thus really wrought in the political fabric may be briefly summarized as follows: The mode of exercising the veto power was reformed by transferring a qualified negative to the governor alone. A more democratic method of exercising the appointing power was adopted, while complete democracy was attained in respect of many minor offices made elective. The suffrage was so extended as to constitute practically white manhood suffrage, few persons without property, except those of African descent, being disqualified to vote.<sup>2</sup> The senate having been thus

<sup>1</sup> William Paterson was born in 1745, and his parents, who were Irish, brought him to this country when he was two years old. He was graduated at Princeton, studied law, and was admitted to the bar in 1769. In 1776, he was a member of the New Jersey State Constitutional Convention, and the same year became attorney-general. He was a delegate to the Continental Congress in 1780-81 and to the National Constitutional Convention in 1787, and in 1789 was elected to the United States Senate, which then met in this city. He became governor of New Jersey in 1791, and two years later was appointed by Washington a justice of the Su-

preme Court of the United States, an office he held until his death, in 1806. His daughter Cornelia married General Stephen Van Rensselaer. (*Vide*, "New-York Genealogical and Biographical Record of 1892," for an address on the judge by his grandson William Paterson of Perth Amboy.)

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<sup>2</sup> It was not until 1826 that citizenship, manhood, and residence became the avowed basis of the electoral franchise (Constitutional Amendment of 1826) for the white part of the population, negroes being required until 1870 to be freeholders paying tax before they were entitled to vote.



popularized, the Court of Errors, then constituted in the senate, was brought nearer to the great body of the people. The original courts of justice of New York, the Chancery and the Supreme Court, were left in such a condition that the chancellor and the Supreme Court justices were no longer officers of State, but were to exercise judicial functions only, of which they might be largely shorn by the power reserved to the legislature, and affecting their several jurisdictions. The defect in the original constitution, which made no provision for its future amendments, was remedied by Article VIII of the new instrument, prescribing the formalities, including a vote of the electors, to attend future amendments. This amendment was taken from a similar provision in the constitution of Massachusetts, and obviated the necessity of a convention upon each change proposed thereafter.

In several respects the new constitution still reflected ancient class prejudices: the governor must be chosen from the body of freeholders, and must be a native citizen of the United States. Neither the possession of personal estate nor naturalization was sufficient to qualify a non-freeholder and an alien born for this office. The experiment of voting by ballot, having been provided for in the first constitution and having proved successful, was, in the new constitution, made imperative on the future.

The first legislature under the new constitution was overwhelmingly Democratic, not a single senator being of the other political party. Governor Clinton met the legislature when it convened, and delivered a speech to them, which was met with a motion for a committee to consider the propriety of answering it. This committee made a report animadverting in terms of severity upon the governor, and pronounced the practice of delivering a speech instead of a message "a remnant of royalty" which ought not to be tolerated. This incident serves only to indicate the jealous deprecation of the ancient customs of New York, and that with the new constitution the people intended more fully to break with the past and to enter upon a genuine era of republican government.

In April, 1823,<sup>1</sup> the legislature, pursuant to the new constitution, divided the State into circuits for the purpose of organizing the new Circuit Courts carved out of the old Supreme Court, and substituted for the old *nisi prius* or itinerant sessions. By the same act, the new circuit judges, who possessed the powers of the old justices of the Supreme Court in chambers and on circuit, were required to reside within the circuit for which they were appointed. This last provision for prudential reasons had not been thrust on the convention, as it might have alienated the votes of those who were believed to be candidates; but the idea was nevertheless very influential in animating



some persons who regarded the old courts as centralized institutions and too closely connected in their traditions with ante-revolutionary times. This school of thought desired a local judiciary of first instance, rather than one whose domicile and inspiration were to be found at the seat of government. This was the beginning of that reform in the judicial establishment of New York which consists in decentralizing or rather localizing all the courts of first instance, thus constituting them county rather than State tribunals.

In 1823 an act was passed authorizing the circuit judges to hold Courts of Equity; it was soon repealed and the power restored to the chancellor, but the circuit judges were to act as vice-chancellors within their circuits. In the year 1826, in the first district, embracing the city of New York, equity jurisdiction was conferred on a legal officer termed the vice-chancellor; for in this district the volume of litigation demanded an increase in the number of judges. From time to time other coadjutors were in like manner appointed. By an act of 1823,<sup>1</sup> the Court of Probates, founded in 1778, was abolished, and its original probate jurisdiction was transferred to the surrogates of the various counties, but subject to an appeal to the chancellor, who was invested with the residuum of the jurisdiction of the Court of Probates not otherwise delegated.

We come next to one of the most important reforms instituted under the second constitution—the Revised Statutes. Before treating of this celebrated work, let us review for a moment the prior revisions of the statute law of the State. The first revision was the joint work of Samuel Jones and Richard Varick, and was effected under an act passed in 1786. The second revision of the acts of the State legislature was undertaken as a private or commercial venture by Thomas Greenleaf. The second edition of Greenleaf's work brought the revision of the State laws to a period nine years later than that of Messrs. Jones and Varick, and as it was recognized by the courts as a faithful work, it received a judicial sanction, accorded to no other private edition of laws, excepting perhaps the Webster publications from 1802 to 1812 inclusive. The next revision of the laws was undertaken by Justices Kent and Radeliff, pursuant to an act of the legislature;<sup>2</sup> this soon became the corrected version of the public and private acts of the State. This revision simply omits the laws or parts of laws abrogated, and pursues a chronological arrangement of the first volume and a subject arrangement of the second. The new revised laws of 1813 next superseded Kent and Radeliff's revision. By an act of the legislature,<sup>3</sup> William P. Van Ness and John Woodworth were directed to arrange the laws of a general and permanent nature

<sup>1</sup> Chapter 70.    <sup>2</sup> Chapter 190, Laws of 1801.    <sup>3</sup> Chapter 150, Laws of 1811; Chapter 195, N. R. L. of 1813.

systematically in divisions under proper heads, with such marginal notes as appeared to be best calculated for public information. As the revision of Jones and Varick was the first of the State revisions in point of time, so that of Van Ness and Woodworth was *facile princeps* in point of method and arrangement; the marginal notes, prepared by John V. N. Yates, and included in the revision of 1813, are among the most valuable expositions of the laws of this State; they oftentimes, by enumerating the various English and colonial acts which contained like provisions, embrace a succinct history of the statutes to which they refer. Even at the present day the history of many legislative measures may be more easily gathered from this revision than from any other single work, and it remains a profound example of faithful professional service.<sup>1</sup>



CITY HALL AND CITY HALL PARK IN 1812.

The revisers of 1813, imitating the example of Messrs. Jones and Varick, did not include in their revision the colonial acts which remained in force under the 35th section of the State constitution. Printed as an appendix to the revision of 1813 are to be found several acts of the colonial assembly which the revisers thought would be useful to the profession. Among these is the "Charter of Libertys" enacted by the first regular legislature of New York in 1683; the Ordinances of Lord Bellomont and Viscount Cornbury—continuing the Supreme Court of New York after the act of the legislature passed in 1891 had expired by limitation—are also included in such appendix. As illustrating several questions concerning the former provincial law of inheritances, which long retained some elements of the Dutch jurisprudence, the revisers appended also the Articles of Capitulation between the Dutch and English, signed in 1664. They might, with

<sup>1</sup> See, however, the commentary on the revision of 1813 by Samuel Jones, co-author of Jones and Varick's Revision (N. Y. Historical Society's Col., III.).

equal propriety, have included in the appendix the definitive treaty of peace between Great Britain and the United States in 1783, for it was, with unusual particularity, made a fundamental part of the State law by an act of the legislature, passed in 1788,<sup>1</sup> repealing all acts and parts of acts which conflicted with the treaty in question.

To recur to the revision under the second constitution of the State. In the year 1823, and again in 1824, Governor Yates directed the attention of the legislature to the condition of the statute-book of the State, and recommended a revision on account of the changes made in the law by the constitution of 1821-3, and the very confused and scattered situation of the statutes.<sup>2</sup> Obedient to the governor's suggestion, an act was passed, at the following session of the legislature,<sup>3</sup> for the purposes indicated. This act of 1824, though soon repealed, is important as the precursor of the Revised Statutes. The revisers designated by it were of very different types of thought. Chancellor Kent was selected as the exponent of the traditional school of law; Erastus Root, the lieutenant-governor, as the most radical of the reforming lawyers. Benjamin F. Butler, then a young lawyer associated with Martin Van Buren, was the third reviser under this act. By the act of 1824, the revisers were authorized and directed, among other things, to collect and to reduce into proper form all acts of the legislature then in force, omitting all the acts repealed, and reducing the various acts upon the same subject to acts of one chapter each; they were also to report to the legislature the defects in the existing laws. Two years were allowed for the contemplated revision, which, like its predecessors of 1802 and 1813, was to be little more than an orderly arrangement of the statutes then in force, with a proper index for more convenient use.

Chancellor Kent, for reasons easily perceived from the reports of the constitutional convention of 1823, refused to act with any one else; and the governor designated, in his stead, John Duer. There seems to have been little or no sympathy existing between General Root and his associates, Messrs. Duer and Butler, who, quite independently of their colleague, submitted the plan of the revision which they deemed to be the most suitable.<sup>4</sup> Meanwhile General Root had been proceeding on his own account with the revision of the laws relating to taxation and highways.

During the legislative consideration of Messrs. Duer and Butler's proposed amended bill giving larger scope to the revisers, the name of Henry Wheaton was substituted for that of Erastus Root. The senate non-concurring in this particular amendment, a compromise was attained by directing compensation to be given to General Root

<sup>1</sup> Chapter 41.

<sup>2</sup> "Assembly Journal," 1824, p. 9.

<sup>3</sup> Chapter 336, Laws of 1824.

<sup>4</sup> See Appendix D, "Journal of Assembly," 1825.

for his services in the matter.<sup>1</sup> The amended bill then became a law.<sup>2</sup> In their suggestions to induce the legislature to enlarge the scope of the revision, Messrs. Butler and Duer stated, among other things, that they conceived that not only a reduction of all the laws on the same subject into chapters was necessary, but also an entire new arrangement of the existing statutes. This they thought would reduce the statutes then in force to half their extent; it would render them so concise, simple, and perspicuous as to be intelligible not only to professional men, but to persons of every capacity; it would relieve the statutes from obscurities, lead to an easy reference by proper indexes, and greatly facilitate the acquisition of the law as a science. Lastly, it would supersede the necessity of all future revisions, and prepare the way for a scientific codification of the law. Utopian as the scheme then seemed, it nevertheless led to what may be called the most brilliant achievement ever then performed upon the text of the English common law. It is even highly probable that future revisions might long have been dispensed with, had the revisers' plan been carried out, and had each new act, as passed, been assigned to its appropriate chapter, by some person or persons whose duty it was to prepare the session laws for publication. That the revision led to codification may well be believed, for even Jeremy Bentham, in a letter to Livingston of Louisiana, approved of the work.

But to follow the inception of this great revision. The act of 1825,<sup>3</sup> thus amending the original act of 1824, reappointed Mr. Butler, added the governor's appointee, Mr. Duer, and substituted Mr. Wheaton, afterward the distinguished publicist, for General Root in the corps of revisers. That the substitution of Mr. Wheaton added much to the philosophic conception and character of the work ought not to be doubted; but greater praise is due to the other revisers, for they, with Mr. Spencer, completed the whole work with a lucidity and a felicity of expression at that time unparalleled in the history of statutes composed in the English tongue.

The act of 1825 empowered and directed the revisers to collect all public acts in force at the end of the forty-eighth session (1825), and to reduce and consolidate into one act all the different acts relating to the same subject, distributing them under such titles, divisions, and sections as they thought proper, but omitting all acts and parts of acts repealed or expired by limitation. In every other respect the revisers were to complete the revision in such a manner as to them seemed most useful and proper to render the revised acts more plain and easy to be understood. From time to time they were to report the revision to the legislature, to be reënacted if that body saw fit. An important feature of the act of 1825 was the advisory power it con-

<sup>1</sup> "Assembly Journal," 1825, p. 1173.

<sup>2</sup> Chapter 324, Laws of 1825.

<sup>3</sup> Chapter 324.



ferred on the revisers, who were to suggest to the legislature all such changes as they deemed expedient in the statute law of the State. Two years were allowed by the act to complete the revision.

In the year 1826, the revisers, Messrs. Butler, Duer, and Wheaton, mapped out more completely the plan of the revision, and classified the statutes to be revised. They finally determined upon dividing the work into five principal divisions, as follows: The first part to contain those acts which related to the territory, the political division, the civil polity, and the internal administration of the State; the second part, those acts which related to real and personal property, the domestic relations, and to all matters generally connected with private rights; the third part to contain the statutes relating to the judicature branch of government and to the procedure in civil cases; the fourth part to be concerned with the statutes relating to crimes, punishments, and to the mode of procedure in criminal cases, and to prison discipline; and the fifth part with the laws relating to cities, villages, and other corporations.



*Jos. Ogden Hoffman*

The first and fifth parts of the Revised Statutes, relating to the territory, the political divisions, the civil polity, and the internal administration of the State, are of the least interest in a purely juristic or scientific phase of the revision; but they were of great utility.

There is little doubt that the general and comprehensive plan of the whole revision of 1829 had the valuable coöperation of Mr. Wheaton. The first part of the Revised Statutes was the work of Mr. Wheaton, Mr. Butler, and Mr. Duer; but before this part of the revision was acted on by the legislature, Mr. Wheaton was sent abroad in a diplomatic capacity, and Mr. John C. Spencer took his place. After Mr. Spencer's appointment considerable additional labor was bestowed on the part already prepared; and it may be said, therefore, that the first

<sup>1</sup> Josiah Ogden Hoffman was a distinguished lawyer, and was the father of Murray Hoffman, the jurist and author of several works on chancery and ecclesiastical law; of Ogden Hoffman, the gifted orator and lawyer, who was counsel in almost every prominent criminal case in New-York city for twenty-five years, and who had been a member of Congress, U. S. district attorney, and

State attorney-general; and of Charles Fenno Hoffman, the accomplished man of letters. Mr. Hoffman was a warm friend of Washington Irving, who studied law in his office. It was to his daughter Matilda that Irving was engaged. When he died, her Bible, containing a lock of her hair, was found under his pillow.



part of the Revised Statutes was the work of four revisers, and not of three, as originally contemplated.<sup>1</sup>

While the revisers in their general arrangement mainly adopted the system employed in Blackstone's Commentaries, and took the titles of the various chapters of the revision from that celebrated work, yet they made discriminating changes and avoided some errors made by Blackstone himself, notably his division of the *jus privatum* into "rights of persons and rights of things," criticized by Austin,—things being incapable of rights and a mistranslation of the phrase of the civilians, "*jus rerum*." No opponent of Blackstone has ever denied that his arrangement was eminently practical. The revisers could not, therefore, have taken a plan more familiar to lawyers than this, and it added to the success of the work.

If we except the Statute 12, Car. II., ch. 24, converting most of the feudal tenures in England into free and common socage, and sounding the knell of the entire feudal system, Part II of the Revised Statutes of New York embodied the most important reforms ever made by a single statute in the historic land law of an English-speaking people.<sup>2</sup>

<sup>1</sup> See Senate Journal, 1827, p. 32; Revisers' Reports to the Legislature with chapters 9 and 19 of the first part.

<sup>2</sup> The better to note some of the more important changes introduced in the land law of New York by the revisers, in the second part of their revision (the first three chapters of which are devoted to this subject), we may briefly recall the condition of this branch of our jurisprudence prior to this revision. Charles II., with what right previously inquired, granted the territory occupied by the Dutch of New Netherland, and much more adjacent, to the Duke of York by letters patent, dated March 12, 1664, and subsequently by letters confirmatory, dated in 1674. By both these patents the tenure of the province was "as our Manor of East Greenwich in our county of Kent, in free and common socage, and not *in capite*, nor by knight's service." At the date of the first patent, the Statute 12, Car. II., ch. 24, had already swept away most of the burdens of feudal tenures in England. The socage tenure in 1664 remained subject only to the feudal incidents of relief, rent, fealty, and escheats. As thus modified, the socage tenure was introduced in New York. The rent incident to it was a quit-rent of trifling value (sometimes, in New York, a bushel to the hundred acres, but in 1732 the surveyor-general's report puts it at 2s. 6d. for the same quantity); the relief payable by the heirs on the ancestor's death was the equivalent of a year's quit-rent, while the oath of fealty was commonly never exacted, and escheats were no more burdensome, in practice, than at the present time. After the English conquest the former Dutch inhabitants generally renewed the titles to their lands by taking out new patents, which recited the Dutch ground-brief and confirmed the possession of their lands, to be held of the ducal proprietor in free and common socage. The new

inhabitants took out their patents from the duke's agents in one of the prescribed forms of conveyance. Subsequent to 1664 the modified socage tenure alone existed in New York. It will be recalled that, on the Duke of York's accession to the throne, his private estate in the province was merged in the crown, and he became seized thereof *jure coronæ*. On the abdication of James II., the province of New York pursued the line of devolution prescribed by the act of settlement, the crown possessions and the crown being *concomitantia*. The duke's estate before he ascended the throne was in the nature of a feudatory principality; after the merger it became a royal province, transmitted *secundum jus coronæ*, and thus it remained until the war of independence.

Comparatively recently it was made a debatable question whether the statute *quia emptores*, prohibiting subinfeudation, was in force in the province of New York; and the revisers seem erroneously to have thought not (see 3 R. S., 565, 2d ed., Rev. Notes), and the Court of Appeals, in the case of *De Peyster v. Michael* (6 N. Y., 503), assumed the same thing. But in a later case (*People v. Van Rensselaer*, 9 N. Y., 338) Judge Denio doubted the correctness of the conclusion, and in the still later case of *Van Rensselaer v. Hayes* (19 N. Y., 74) he demonstrated the absurdity of the conclusion that the statute was not generally in force in the province of New York. The fact is one of considerable importance; for if this statute was not in force, a necessary consequence was that the feudal system flourished here during the entire English dominion, and for ten years subsequent (or until the statute was enacted in Jones and Varick's revision), with a vigor entirely unknown to contemporary England. The obvious error that this statute was not in force seems to have arisen by reason of not distinguishing between the manors and the residue of the

Although the law of real property remained a difficult branch of legal science, yet the revisers of 1829 did much to rid it of many subtleties which had been fused on it by the political and social processes through which the common law had passed. The reform in question was accomplished not so much by the introduction of new rules of law, as by the judicious selection and application of the wisest of the old rules, and by the total repeal of mere scholastic subtleties.

The cardinal reform of the Revised Statutes concerning lands did not consist so much in shortening the period during which the power

lands in the province. The erroneous presumption was that, because manors existed here, the statute was not in force, whereas by the common law, *non obstante* the statute, the king might grant the right to his tenants to alienate lands to be holden of the tenant, and thus create a manor, where the lands were not in tenure prior to 18 Edw. I. The lands in New York not embraced in the manor grants were within the statute, and could not be aliened to be held of other lord or person than the king. In short, every sub-alienation of those lands in New York, not situated within the manors, placed the new tenant in the same position toward the king, the lord paramount, as that occupied by the grantor.

During the entire colonial or provincial period, lands in New York were theoretically subject to the same laws as socage lands in the royal manor of East Greenwich, in the county of Kent, in England. In point of fact, such lands were almost entirely exempt from the nominal rents on which they were holden of the crown. It must not be forgotten that formerly no such thing as an absolute ownership of socage lands was known; the tenant had only an estate in them. This estate, without alluding to the more subtle distinctions, was either an estate for years, for life, an estate tail, or in fee simple, the latter being far from absolute in the eyes of the feudalists. The method of transmitting title to socage lands in New York was, until some time subsequent to the war of independence, in accord with the method in vogue in England, whether by descent (the law of primogeniture being in force here until the year 1782); by purchase, in its generic sense as well as in its limited sense; by deeds of feoffment with livery of seizin, by lease, by exchange at common law, by partition, by releases, by defeasance, by devise, and all conveyances operating by virtue of the statute of uses. In addition to these modes, alienations by matters of record, such as fines and recoveries, until the abolition of estates tail in 1782, and even subsequent (see 2 J. and V., p. 84; c. 250, Laws of 1827), were not unknown in New York, as is shown by Mr. Wyche's work on the "Theory and Practice of Fines," one of the first law books written and published in New York. (It was published in 1794.) Of the conveyances by force of the statute of uses, that kind termed lease and re-lease was most commonly employed in New York prior to the revision of the English statutes by Jones and Varick in 1788, when the mode termed bargain and sale became most prevalent,

and so continued until the Revised Statutes in 1830. Alienation of lands by devise, attested under the statute Car. II., was commonly employed in New York from the very foundation of the English government of the province. Among the earliest English laws of New York we find distinct recognition of wills. The adoption of the English law of wills introduced the intricate common-law rules relating to executory devises. Yet of all the intricacies relating to the common law, those concerning executory devises were among the most rational, for they arose out of a most candid effort to effectuate the intentions of devisors. Therefore, when the revisers of the statutes, appointed after the second constitution, came to select rules relating to certain future interests in lands, they gave the preference to those rules and principles of the common law which were applied to executory devises, rather than to those relating to future uses and contingent remainders.

The establishment of the State government in 1777 made but formal changes in the tenures of New York and in the law of real property. Indeed, it may be said that until the Revised Statutes the changes effected in the provincial jurisprudence relating to land were but slight in comparison to those then introduced. Among the more marked changes effected before the Revised Statutes were the following: A resolve of the provincial convention transferred the seignior and escheats and all lands, together with the quit-rents due to the crown, to the State *eo nomine*. This statute was further confirmed by an act of the legislature recognizing the people, passed in 1779 (14, 1 J. & V., p. 44; 56 N. Y., 503). In 1782 the first of the statutes affecting the antecedent law of real property was passed (ch. 2, Laws of 1782). Estates tail were altered into estates in fee simple, the law of primogeniture was abolished, and the canon of descents was made to conform to the more democratical institutions. In 1786 the statute abolishing entails and changing the course of descents was reenacted, but with this difference: estates tail were converted into estates in fee simple absolute, thus avoiding any question as to whether the statute of 1782 had not intended simply to change estates in fee tail into conditional fees, as they had existed in England prior to the statute *de donis*. It is sometimes supposed that when that portion of the statute law of England which extended to New York was revised by Jones and Varick, some new principles affecting the law of real property were introduced. This

of alienation might be suspended, as in the repeal of purely arbitrary technicalities and in substituting therefor uniform and rational provisions. Under the Revised Statutes almost any limitation, artificial or inartificial, was valid if it did not contravene some well-known principle of public policy, or the new rule against perpetuities; a fee might be mounted on a fee as freely by deed as by executory devise; a freehold estate might be created to commence at a future day; an estate for life might be created in a term of years, and a valid remainder limited thereon; a remainder of freehold might be created expectant on the determination of a term of years, provided only that such limitation in no way transcended the rule against perpe-

supposition, however, is incorrect; no new principles affecting this branch of jurisprudence were enacted, and all that Jones and Varick did was to select the English statutes which they deemed in force in New York after the adoption of the first constitution. The legislature, then, in order to reduce a doubtful question to certainty, repealed the residue not so selected for reenactment, by declaring their force to be at an end (2 J. & V., 282).

The statute abolishing entails was not a reform of such great importance as it is sometimes esteemed, for entails might be broken and lands rendered alienable by the tenant of the freehold's suffering a fine, or common recovery, thus barring the entail, reversion, or remainder, and converting the estate into one in fee simple. The force of the New York statutes converting estates tail into estates in fee simple, like all statutes attempting reforms without complete reference to collateral results, was greatly circumscribed by the evident desire of the courts to support the limitations over, in some cases of wills, as an executory devise, so as not to defeat the remainder. In this effort the courts made a distinct departure from the former common law; and in order not to effectuate the statute to its literal extent, they held that certain words, before creating an estate tail, did not now create an estate tail, which would have been converted into a fee in the first taker, and, therefore, that the limitation over on the death of the first taker, without issue, was good as an executory devise. (1 Johns., 440; 3 id., 292; 11 id., 337; 16 id., 382, Medef Eden's case.)

Prior to the Revised Statutes socage lands might be rendered inalienable for an uncertain period by vesting the title to them on contingencies after the creation of a short precedent estate. By an ingenious invention of the conveyancers, through the medium of trustees, to support contingent remainders, the contingent interests could not thereafter be barred as formerly. Contingent remainders might be created by any mode of conveyance. The methods of rendering lands inalienable were by the technical methods styled secondary, springing, shifting, or future uses and executory devices, and those known to the chancery bar as express trusts in lands. Under the extremely technical rules employed, limitations might be valid in one instrument, and invalid if put in another. The whole learning was occult, and historically denoted the contest in England between the great landowners who desired to per-

petuate their estates, and the commons who desired to render real property merchantable and alienable and to avoid perpetuities. In the course of this conflict, whenever Parliament passed a remedial act, the *noblesse de la robe* of England, with the assistance of the Aristotelian logic and the Court of Chancery, invariably defeated the full extent of the remedy. Covered with scholia, and known to only the most intellectual members of the bar, the English law of real property was in practice a very labyrinth delightful only to its guardians, although it had become by 1826 very systematic and greatly improved. In this year the New York law of real property had theoretically attained to the same advanced stage of development as that of England. It was capable of becoming a horrible burden for the new State, and when the young revisers approached their task, the black-letter lawyers, who had learned a recent lesson in the constitutional convention of 1821, made little or no effectual outcry against the reforms proposed.

Having very briefly and inadequately intimated the condition of the land law of New York when the revisers approached it, we may now assume that it was substantially the English law relative to the English tenure in free and common socage as modified by a few statutes of the province which had become singularly inaccessible, or had fallen into disuse. Premising that the revisers procured the repeal of all the province statutes (Subdivision 4, Sec. 554, c. 21, Laws of 1828), the Revised Statutes declared that the people of the State, in their right of sovereignty, possessed the original and ultimate property in and to all lands within the jurisdiction of the State. Escheats were made to follow this ultimate proprietorship, though all lands were declared allodial. It has been argued by very learned lawyers that, as long as escheats survived, this change effected no substantial reform, and that the very terminology of the Revised Statutes involved the entire antecedent law relating to the socage tenure. Although this is logically true, the real changes effected mitigated the rigor of the common law of escheat by providing that escheated lands should be subject to the same trusts and encumbrances which they would have been subject to had such lands not escheated. The revisers retained the rights, powers, and duties of socage guardians, but vested them in a different class of persons, wisely changing the common-law rule that the guardianship

tuities. Even contingencies double, treble, or manifold, probable or improbable, might, if they did not cause a perpetuity, be the basis of limitations.

Other changes in the antecedent law were made by Article 1 of Title 2, Chapter 1 of Part II.<sup>1</sup>

Enough has been said to indicate the scope of the change effected by the revisers. While the work as a whole purported to be a revision of existing laws, the term "revision" covered a multitude of reforms, and modified large parts of the common law declared to be part of the law of the State by the constitutions of 1777 and 1821.

The modifications which the revisers made in legal estates in lands

shall belong to the next of kin to whom the inheritance could not by any possibility descend, so as to enable near relations to become guardians of the infant possessors of lands. The wisdom of the common law rule had been impeached long before by Lord Chancellor Macclesfield. In Article 2 of Part II of the Revised Statutes, the revisers saw fit to perpetuate the rule of the common law, founded entirely on feudal reasons, that only citizens should hold lands within the State, though they modified the rigor of the rule somewhat in favor of persons about to become citizens. The wisdom of retaining any part of the disability in question may be doubted at this day, when land has become merchantable property, and the duties of its owners to the State do not differ from those of the owners of personality.

The second title of Chapter II introduced the most considerable changes in the law of real property. The revisers, however, retained the established terms defining the quantity of interest persons might have in immovable property, although in some instances they converted particular terms from species to genera: the force of the term remainders was extended so as to include future and contingent uses, as well as contingent remainders. Notwithstanding the abolition of tenures, every estate of inheritance continued to be designated either a fee simple, or a fee simple absolute, thus preserving the former distinction between limited or conditional fees and fees absolute at common law. The statute, first passed in 1782, converting estates tail into fee simple, was reenacted, but the revisers remedied the hardship of the original statute by which a remainder limited upon an estate tail was cut off, even though the first taker or tenant in tail died without issue living at his death.

One of the most considerable changes in the antecedent law effected by the Revised Statutes, related to the period during which the power of alienation might be suspended. The common-law period was reduced from any number of lives in being, and an absolute term of twenty-one years, and a fraction for gestation, to two lives in being; but the Revised Statutes permitted a valid contingent remainder, to take effect in case this second life die before attaining majority, or the estate was determined in any other way before the majority of the second life. This reform, though apparently slight, was really a considerable innovation; lives alone became the standard of sus-

pension, and no absolute term, not even a day or an hour, might intervene. The new period of suspension now amounted to the longest of two lives in being, and, in a single case of actual infancy, the period of minority in addition. At a subsequent judicial interpretation of this new rule in which they took part, the revisers do not seem to have been entirely clear as to what the exact object of the statute really was. In the leading case of *Coster v. Lorillard*, they argued that the new rule ought to be applied to executory limitations of a contingent character only, and not to vested remainders which did not suspend the power of alienation. The court of last resort, as it was then composed, had a good proportion of laymen, and the new rule was ultimately applied to all future estates in lands, vested and contingent alike. It is difficult to perceive how the court could have decided otherwise, in view of the section which provides for the acceleration of remainders, in all cases where the estate is limited on more than two successive estates for life, to persons in being at the creation of the estate. Yet the other construction was stoutly contended for by some persons eminent in the legal profession. (See V.-Ch. McCoun's opinion, 5 Paige, 179-198.)

<sup>1</sup>The famous common-law rule now associated only with Shelly's case was abrogated, and, according to the real intention of the donor when the remainder was limited to the heirs of a person to whom a life estate in the same premises was given, the heirs, by the Revised Statutes, took as purchasers. The rule in Shelly's case had original reference in England to the political struggle against perpetuities, and its longer existence was now rendered unnecessary in New York by reason of the very clear rule on the subject of perpetuities. The accumulation of the profits of lands was controlled so as not to permit a repetition of Thelluson's case (4 Vesey, 221; 11 id., 112); and as the New York law was not, of course, affected by the British acts 39 and 40 George III., an entirely new provision was introduced: the revisers confined the accumulation of the profits of lands to the single case of an infant owner or beneficiary, and tolerated it in no other case. Many other minor provisions, confirming the general scheme of the statute, were revised and incorporated by the revisers in the revision; but in a general commentary on the subject it is impossible to refer to all of them.



having been noticed, we may point out some of the changes which they instituted relative to uses and trusts, cognizable in the Courts of Equity of New York from the inception of the English rule. Although prior to the Revised Statutes the exigencies of society here, as fortunes were then more limited, had not made any very great demands on the English law of trusts, yet by reason of the constitutional definition of the fundamental law of New York, the English law of uses and trusts was assumed to be in full force and vigor in the State. It was in consequence open to like objections, which prior to the Revised Statutes had been very fully discussed in England by an advanced thinker, a barrister of Lincoln's Inn, Mr. Humphreys, who had outlined a scheme of reform of the socage tenure, and made some very practical suggestions. Our revisers certainly had the benefit of his scheme, though they did not always follow it to its logical conclusion, with diverse opinions as to the result. The law of uses and trusts had grown up in England from a species of indirect legislation, sometimes called the English *jus honorarium* from its likeness to the pretorian legislation of Rome. The reforms in the branch of the New York law contemplated by the revisers were materially assisted by the popular hostility to the extended judicial power of the chancery, already noticed. The Statute of Frauds<sup>1</sup> had put an end to secret trusts, and required all trusts in lands to be in writing; and subsequent to this the learning on this subject had become fairly systematic. The Revised Statutes abolished all charitable and pious uses and all simple or passive trusts, and saved only four classes of active or special trusts, called "the statutory trusts."<sup>2</sup> Most of the former active trusts, however, survived the revision as powers in trust, while some former trust powers were enumerated as express trusts.<sup>3</sup>

The scheme of the reform intended was the abolition of all passive trusts in lands, the restriction of the lawful special trusts to fewer purposes, the abolition of secret resulting trusts in favor of persons paying the consideration, and lastly to cause the legal title to devolve according to the canon of descents in a greater number of instances than formerly. In the application of the revisers' scheme to the actual work of revision, many minor sections contribute to the result. In the abolition of former trusts several things were to be accomplished, such as the consistent devolution of the legal title in cases where formal or other unlawful trusts were attempted to be created or then existed. Every avenue for a continuance of formal trusts was skillfully closed by the revisers, and in cases where the special trust purpose was converted into a statutory power, it was provided that the legal title, as it was not a necessary adjunct, should pursue that line



of devolution it would have pursued had there been no "power" affecting it. For abundant caution all executed uses in possession were confirmed so that the revised statutes of uses and trusts should not be retroactive. The adjective law of trusts was not affected by this article of the revision; it naturally belonged to a more extensive work, which should include procedure.

The revisers had not only to effect the reforms mentioned, but they had to harmonize the revised laws of uses and trusts with the revised laws concerning legal estates; for the revision preserved those distinct conceptions of property which the antinomy of the English juridical system had introduced here<sup>1</sup>

The revisers had to some extent contemplated the destruction of the former analogy between legal and equitable estates in lands. They provided that the *cestui que trust* should no longer take an estate in lands, and converted his right into an equitable interest enforceable in chancery. This was, however, a verbal rather than a substantial change; but in view of that clause of the Revised Statutes preventing anticipation by the beneficiary interested in a trust for the receipt of the rents and profits of lands, it certainly seemed logical to term such a beneficiary right an "interest," and not an "estate"; for a right that is not assignable bears little similarity to an estate which is *nomen collectivum*, including the right to dispose of it. In some other respects there is no longer a perfect analogy between the natures of legal and equitable estates in lands. Legal life estates must be limited to persons in being, but trusts will inure to the benefit of persons not in being when the trust is created.<sup>2</sup>

Whether on the whole any great reform in the former law of trusts has been produced by the Revised Statutes, is an open question. A new learning of trusts, founded on the revision, has certainly arisen,

<sup>1</sup> In English jurisprudence the distinct conceptions of legal and equitable interests in property were soon discovered to be artificial, and a tendency to assimilate the two distinct interests began. This reactionary tendency ultimately produced striking analogies between legal and equitable estates. An equitable tenant in tail could even alien his equitable interest by fine, and the courts talked gravely about the seizure and des seizure of equitable estates. Subsequent to the Revised Statutes some attempts to revive the former analogy between legal and equitable estates were made. Why, it was reasonably asked, should the rule concerning the limitation of legal estates now differ from the rules concerning equitable estates or interests in lands? In cases where a remainder in a legal estate was limited on more than two lives in being, such remainder, by the section accelerating remainders, was preserved. Why should this not be the rule where a perpetuity by way of trust was created antecedent to the remainder? But the courts intimated that the Revised Statutes had destroyed any anal-

ogy between legal and equitable estates in land. Limitations beyond the legal trust period were now vitiated by statute. 9 N. Y., 403.

<sup>2</sup> As the Revised Statutes restricted anticipation, many difficult questions involving the *ius disponendi* of an equitable estate (*cf. q.*, 8 N. Y., 9) ceased, although others, perhaps as difficult, have succeeded them. Attempts to reach what is obviously a property right—the interest of a *cestui que trust* in a permanent trust for the receipt of the rents and profits of lands—have from time to time been attended with many embarrassments, owing to the change in the law (31 N. Y., 9; 35 id., 361; 70 id., 270).

The estate which the trustee took in all cases of valid express trusts—though apparently enlarged by the Revised Statutes, which declare that the trustee shall be vested with the whole estate, in law and in equity, subject only to the execution of the trust—was in reality not extended at all. As before the Revised Statutes, the trustee's legal estate was commensurate with the trust duty to be performed; and when the duty was performed,

and the present law of uses and trusts, now as formerly, is to be found in reported cases rather than in a statutory form. In the hands of skilful conveyancers, real property continued susceptible to very subtle modifications and limitations. Whether this is a healthy condition of the laws of real property, it is for the hustings and for our statesmen to determine. Any of us is entitled to the opinion that it were better had the revisers gone farther. It is not an interference with the rights of property to abridge a power of testamentary disposition, and to destroy the power of accumulating overgrown or ill-gotten fortunes by means of trusts. But on the whole the reforms in the land law of New York conduced to simplicity and were a sound reform. They have created a new learning founded on the statute, but a learning much simpler than the old, yet on the whole still susceptible of great improvement in the future. Such obscurities as those relating to lineal and collateral warranties ceased by their abolition. Landed property was rendered easily subject to the payment of debts. The canon of descents, and many other matters relating to real estate, were modernized and improved. Among the more important reforms embodied in Part II of the Revised Statutes, were those concerning the law of wills, which the revisers reduced to much simplicity. The laws relating to marriage in New York were in great confusion prior to the Revised Statutes. This evil was also corrected, and the law made plain and certain<sup>1</sup>

Part III of the revision, relating to the courts of justice, was generally declaratory, and, while of great practical utility, introduced fewer novelties than the other parts by reason of the limitations imposed by the constitutions on this subject. Part IV, relating to

*eo instanti*, the trustee's estate ceased (3 N. Y., 525; 43 id., 363), and oftentimes, by virtue of the statute, instantly devolved upon the person entitled to the next estate (3 N. Y., 535; 7 id., 571; 10 id., 268; 34 id., 555), though in some cases a trustee might still be compelled to execute conveyances to the next eventual owner, just as the donee of a power in trust might be. (*In arguendo*, 24 N. Y., 15.)

The revisers made a radical change in the devolution of the legal estate on the death of trustees. Prior to the Revised Statutes the trustees might devise the legal estate, or it might descend to their heirs cloaked in the trust. But this inconvenient rule was wisely changed so that on the death of a trustee the legal estate, in all cases, passed to the appropriate court of judicature, possessing chancery jurisdiction. (44 N. Y., 249.) This canon of descents, if it may be so termed, had, however, no application to trusts *ex maleficio*. (14 Wend., 176.) The Revised Statutes made no change in the equity power of the chancellor to remove trustees for cause. The peculiar distinction between equitable and legal interests in property not having been abolished,—even if its abolition were possible,—the courts have been obliged to continue

to recognize such distinct interests, notwithstanding the subsequent abolition of the distinction between the remedies correlated to these distinct rights.

<sup>1</sup> There has been some discussion concerning the principal authorship of the first three chapters of Part II, involving the leading changes made in the land law of the State; but the general opinion of those most familiar with the subject—an opinion borne out by the journals and legislative records—is that Messrs. Spencer and Duer, in the order named, were the responsible authors of these great changes. But they did not stop here. We know that Mr. Spencer carefully considered the scope of the entire revision; for with his own hand he wrote a commentary for the "Ontario Messenger," pointing out the principal alterations made by the revisers in the common and statute law of the State. As Mr. Duer was the oldest of the revisers, being forty-three years of age, while Mr. Spencer was thirty-seven and Mr. Butler twenty-nine, the presumption, in the absence of proof positive, is in accord with tradition and the indications of the public documents, which are corroborative.

criminal law, including a whole scheme of punishment and prison discipline, was very comprehensive in its character. While most of the provisions of the criminal code were taken from the former statutes of the State, some suggestions touching the penal law were adopted from Livingston's justly celebrated "System of Penal Law for Louisiana," and some from the newer English reformatory acts introduced by Mr. Peel, but never in force in New York. That portion of Part IV which relates to prison discipline may be said to have introduced too few of the humane reforms which had even then been recommended by Edward Livingston of Louisiana, who was much impressed with the suggestions of Jeremy Bentham, the great master of the philosophy of legislation. The revisers announced themselves as quite satisfied with the old system, and evidently were not impressed by the advanced speculations of the theoretical writers. In this single respect the Revised Statutes of New York were notably faulty. Several notes to the text, containing a brief outline of the changes wrought by the Revised Statutes, have been inserted because such revision constitutes an epoch in the law-making of the State. While they purported to be a revision of old laws, they were more. After they were enacted, all the former laws of the old province made part of the fundamental law of the State by the constitutions of 1777 and 1821 were also repealed. Thenceforth the *corpus juris* of New York consisted only of the statute law of the State (the English statutes having been previously recast and the residue repealed), and the common law of England, as previously received and interpreted under the province and State governments; but even this was declared by the constitution to be subject to such alterations as the legislature should make in it. That the legislative power to alter included the most sovereign power of change was not doubted. What the Revised Statutes best demonstrated was, that the common law of English-speaking States and origin was susceptible of important statutory modifications without the destruction of those essential principles of growth which had been unfolded in the course of the history of the English nation, and that such changes could be made by the ordinary legislative machinery without a catastrophe to the body politic. Thus the revision destroyed the fetish of the common law, while it showed that the law itself was not elusive; and it pointed the way, followed in many other States, to important changes in the private jural relations of America. Through it subsequent changes, not yet foreseen, were involved and made easy, while the dead law of the past was rendered the servant and not the master of the State. Though perhaps too frequently and often unskillfully amended, the Revised Statutes of 1829 may be said to be still the chief source of the statute law of the State.

While the constitution of 1821 declared that the common law in force in the colony on April 19, 1775, should continue to be the law of the State, it did not abrogate the small residuum of the ancient Dutch law left standing by that postulate of the common law which gives effect to the laws of the conquered until abrogated.<sup>1</sup> Yet this



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portion of the ancient Dutch law was very slender and rather a rule of property: the burden of proof was on the proponent to show the particular institute of the Dutch law in force, as the presumption was that the common law controlled in the absence of such proof.<sup>2</sup> The adjudged cases give evidence of the extent of this slight survival of Dutch law. For example, in 1830, in the canal cases, eminent counsel, including the attorney-general, contended that the Dutch law still determined the right of certain riparian owners.<sup>3</sup> In 1817 even Chancellor Kent, who, in a desire to invoke the entire ready-made system of English law, often ignored the differ-

ences observed in the province of New York,<sup>4</sup> held that by the Dutch law a grant to the inhabitants of Hempstead constituted them a corporation.<sup>5</sup> Still later cases, such as *Dunham v. Williams*,<sup>6</sup> have given effect to a particular rule of the ancient Dutch law. But the great foundation of the unwritten or non-statute law, under the constitution of 1821 as before, continued to be the common law received in the province, as altered by the statutes of the State. What indeed was technically meant by the use of the term "common law"—a term ambiguous enough to denote at times either the *jus non scriptum* or the entire particular jurisprudence of England—has occasioned much consideration by the more subtle-minded among the lawyers. On the whole, the general and vague definition in *Morgan v. King*,<sup>7</sup> to the effect that it meant the *rationale* rather than a particular institute of English jurisprudence, is the most satisfactory. Yet so vague a definition could not be otherwise than an unsatisfactory basis for the common law of a great State.<sup>8</sup>

We have already noticed some of the changes effected by the con-

<sup>1</sup> See Chapter XIV, Vol. I, p. 559; Chapter XIV, Vol. II, p. 593. <sup>2</sup> Canal Cases, 5 Wendell, 446.

<sup>3</sup> 5 Wendell, 436; 17 Wendell, 571.

<sup>4</sup> See the late B. F. Butler's "Outline of the Constitutional History of New-York," *passim*.

<sup>5</sup> Denton v. Jackson, 2 Johns. Chancery, 320.

<sup>6</sup> 37 N. Y., 251.

<sup>7</sup> 30 Barb., 14; reversed on another point, 35 N. Y., 454.

<sup>8</sup> There is in existence an old English book called "Tomlin's Repertorium Juridicum," which, as it is remembered, contains a list of all English decisions down to the date of the battle of Lexington, when the English cases ceased to be authoritative



stitution of 1821 in the greater among the ancient courts of New York. With the exceptions indicated, they continued substantially as before,<sup>1</sup> but the chancellor and judges under the new constitution owed their office to the appointment of the governor with the consent of the senate, instead of, as formerly, to the council of appointment, which this constitution abolished. In order to prevent a repetition of the odium fastened on the judges by their State functions under the first constitution, the new constitution provided that neither the chancellor nor the judges should hold any other office or place of public trust during their term of office. The Revised Statutes did not attempt to define the jurisdiction of the Court of Chancery of New York, which had never been very precisely defined. The act of 1683, which has the credit of its erection,<sup>2</sup> gave it general equity powers. The Revised Statutes declared the powers of the court to be vested in the chancellor. How far the Court of Chancery of New York was vested with the ancient jurisdiction of the English court was discussed in the year 1810, in the most interesting case of *Yates v. People*,<sup>3</sup> which involved a conflict between the chancellor and the Supreme Court, and where it was held that the New York Chancery possessed only those common-law powers of the court which in England were exercised in the *officina justitie*, or that part from which writs issued *ex debito justitie*, and that the chancellor of New York possessed the powers exercised by the lord chancellor in that branch of the English court called the Court of Equity in Chancery.

Under the constitution of 1821 the powers of the Supreme Court continued substantially as under the crown,<sup>4</sup> and the Revised Statutes declared this to be the fact. The jurisdiction of the minor courts of the justices of the peace was, however, fixed by the Revised Statutes, though the courts themselves were anciently in the province. The county courts for common pleas also were ancient institutions, and were only reorganized by the Revised Statutes. In some of the cities of the State the common-law jurisdiction of the justices and county courts have in this century for convenience been distributed among municipal courts, such as the Courts of Common Pleas in New York city, or the Marine Court of the city of New York, which had also jurisdiction of civil actions brought by seamen. The Court of Common Pleas in the city of New York is one of the most ancient of the tribunals of the State.<sup>5</sup> The Superior Court of the city of New York was erected in 1828, to have cognizance of local actions.<sup>6</sup> It owed its establishment to the long-protracted conspiracy cases which grew out

here, and our own courts took up the amplification of the common law.

<sup>1</sup> Chapter XIV, Vol. II, Memorial History.

<sup>2</sup> 1 Hoffman's "New York Chancery Practice," Chapter I.

<sup>3</sup> 6 Johns., 337.

<sup>4</sup> Graham's "Courts of New York," p. 141 (edition of 1839).

<sup>5</sup> See Chapter XIV, Vol. I, p. 551; Chapter XIV, Vol. II, p. 595.

<sup>6</sup> Laws of 1828, p. 141, c. 137; 3 Revised Statutes, 261.



of the heavy bank failure in the city of New York in 1826, and clogged the calendars of the Court of Common Pleas. Its jurisdiction was statutory, and, unlike that of most of the other courts of New York, was not defined by a cross-reference to some established jurisdiction of a common-law court of England. Under the second constitution, as under the first, the court for the trial of impeachments and correction of errors, constituted in the upper legislative house, like the old Court of Appeals in the province of New York, had supreme appellate jurisdiction in both law and equity.

Under the constitution of 1821 the practice in all the courts, both in law and in equity, remained substantially that of England, but with many local variations which had grown up under the crown government of New York, and which, if separately studied, proved very interesting phenomena. Singularly enough, under the State government there was a tendency among the judges to obliterate these distinctions which had grown up in the province, for to follow ancient precedents is easier than to follow innovation. The Revised Statutes did not reform the practice: they systematized many of the old statutes of New York relative to jeofail practice and proceedings, and embodied some new provisions relative to the limitations of actions in the courts of justice, but no great reform in practice was effected until after the constitution of 1846. The changes made in the judicial establishment by the constitution of 1821 were not sufficient to accomplish much good. In the course of a few years the complaints concerning the delay and expense in legal proceedings became so general as to serve as influential reasons for the reforms instituted by the succeeding convention, called in 1846. The new circuit judgeships, created by the constitution of 1821, proved in the end unsatisfactory to the people, because of the disposition evinced by suitors to review all their decisions before the Supreme Court *in banc*.

After so great a change in the form of the law as that involved in the Revised Statutes, the statute-books of the State for some years showed a cessation of legislative activity. Some few rigid rules of the common law, relative to the non-assignability of certain rights of action or to commercial paper, were modernized. In 1831, however, the arrest and detention of the debtor's body in civil actions was abolished by the Stilwell Act, although this monstrous remedy had been retained in 1829 by the revisers of the statutes. The material development of the State, the founding of cities, banks, schools, turnpike and industrial companies, occupied the larger share of the attention of the law-makers for some years after the Revised Statutes. This was not unnatural, for between the years 1830 and 1845 the population of the State had increased from 1,918,608 to nearly 2,700,000. The completion of the Erie Canal in 1825 had altered the relation

of the State to the commerce of the great West; and by 1831 the construction of steam railways had added new forces to the civilization and development of the State.

From 1821 to 1846 the constitution of the State underwent few organic changes or amendments. In 1826 the office of justices of the peace had been made elective. In 1833 the franchise for elective officers was conferred on all white male citizens inhabiting the State one year preceding an election. The disability of those of African descent continued as before. In 1835 and 1837 the office of mayor in all the cities of the State was made elective, and ceased to be appointive. With these exceptions, the constitution of 1821 stood unaffected by change until the year 1846.

Between the years 1821 and 1846 immigration had already introduced into this commonwealth a very large number of persons of foreign birth. While such constant migrations of strangers into a cultivated and industrious community was reciprocally highly advantageous from an economic point of view, it no doubt temporarily complicated civil government to some extent. The new-comers, easily transmuted by naturalization into citizens, and having abandoned the restraints of their old homes, were attracted by those political doctrines which were most novel to them, and which savored of the most absolute equality, being opposed to centralization and privilege, or in short to the older institutions perpetuated to some extent by the State constitutions of 1777 and 1821. Thus the foreign element of the population of New York swelled the ranks of those of our citizens who were opposed to the State constitution as it existed down to the year 1845. By 1845 the balance of political power had about shifted from the rural districts to the growing towns, and the political discontent was promoted by those in the cities who favored a redistribution of representation. Yet the persons so opposed to the ancient order of things were, perhaps independently of those of foreign birth, in the majority. Many causes had contributed to this disaffection; notably the permanent judicial establishment including the Court of Chancery, the nature of the land laws of the State, and the loose condition of the State debt and finances occasioned by the great public works undertaken. The indiscriminate grants of lands already noticed as taking place, both before and after the establishment of the State government, were now producing their legitimate results—agrarian, social, and political disturbances. At different periods in the history of New York similar disturbances had arisen. It will be recalled that the landlords of the vast grants of lands in the interior of the State had, in accordance with the English land law of the province, made perpetual leases instead of granting estates in fee. Sometimes the leases were on condition of rent, services, or of produce to be rendered

in kind. The landlords had generally reserved, also, mines and water-power, and, to preserve the character of their estates, had restrained the tenants from assigning their interests except on payment to the landlords of some portion of the consideration received by the tenants. The leases were full of subtle and ingenious covenants of distraint in favor of the landlord. The great grants had been protected by the State constitutions of 1777 and 1821. As early as 1811 the legislature had appointed Ambrose Spencer, John Woodworth, and William P. Van Ness to examine the laws of New York on this subject, and to report what reforms in the land law could be instituted without impairing vested rights. A bill was accordingly introduced into the Senate, but failed to become a law. About this same time the tenants on the Clarke estate in various western counties memorialized the legislature to investigate the title of their landlord, and the whole subject was referred to a committee of which General Root was chairman. Subsequently the manor of Livingston underwent legislative investigation. In 1813 the sheriff of Columbia County was murdered by the "anti-renters," as the uprising tenants were called. In 1837 the settlers in many counties, occupying the lands of the Holland Company, and holding certain contracts of sale with forfeiture clauses, destroyed papers in the land office in Chautauqua County, and an armed multitude of them collected in Batavia, but were dispersed by the military. After the death of the patroon in 1839, it became necessary to attempt to collect unpaid rents on the manor of Rensselaerwyck. This process, being resisted, led to the employment of the militia and a proclamation by Governor Seward, when the tenants consented to refer their grievances to the legislature. A policy of delay and official red tape led to the deplorable scenes of 1844-5, when the turbulent tenants, arrayed as Indians, committed various agrarian outrages and disturbances. Anti-rent newspapers and politicians sprang up to play an important part in the presidential canvass of 1844, while in some counties civil government was entirely paralyzed. In the midst of these serious disturbances the legislature took steps for a constitutional convention. Meanwhile the civil authorities acted with great propriety in their efforts to maintain law and order, and acts of assembly were passed enabling the governor to declare martial law in disturbed counties, and making it felony to rescue prisoners, to resist legal process, or to appear disguised. Withal, there was a feeling prevalent in the minds of many disinterested persons that the lands of New York had been grossly mismanaged from the foundation of the English government in 1664, and that the present successors of the early land speculators were now really paying off the moral debts of their predecessors. The agrarian difficulties and the natural growth of democratical doctrines served to increase

the dissatisfaction with the nature of the government under the constitution of 1821, and in 1844 and 1845 steps were taken toward a constitutional convention.

In the year 1845, the mandates of the constitution of 1821 providing for its amendment having been performed,<sup>1</sup> the question of "constitutional convention" or "no convention" was submitted to the electors, and decided in the affirmative by a vote of 213,257 to 33,860.

On June 1, 1846, the convention, elected pursuant to law in April preceding, assembled at the capitol. It embraced many distinguished citizens, including some of the leading lawyers of the State, notably Charles O'Connor, Churchill Cambreling, John K. Porter, Levi Chatfield, Samuel Nelson, Samuel J. Tilden, Henry Nicoll, Ambrose L. Jordan, Ezekiel Bacon, Nathan Williams, and others. For the first time in



*Wm. Lunt*

the history of political movements of New York, the great landholders of the ancient parts of the State seem to have been ignored by the voters. The old régime had obviously lost control, and new counsels were thenceforth to prevail in the State, founded on the enlarged suffrage and on more democratic and enlightened principles, or at least on those freer from purely Anglican traditions and customs inherited or transmitted by the constitution of 1777. It was obvious that a large share of the rural population were no longer to be obligated by such ridiculous restraints and covenants in farm leases as "that they should go to the grantor's mill only," or that they should not entertain strangers over one day, or that they should set out trees to the number of —, keeping them replaced *winter* or *summer*.

The new constitution was formulated in fourteen articles, much discussed, and adopted with one exception by large majorities. Space will permit a glance only at their purport. The preamble repeated its emanation from the people of the State, while the first article contained certain general limitations of the powers of government in the shape of a bill of rights and privileges, every sentence of which again bore evidences of the historic struggle for liberty by the English-speaking peoples in the old and new worlds. Most of these limitations had been contained in the earlier constitutions. Trial by jury, religious liberty, the writ of *habeas corpus*, bail for accused persons,

<sup>1</sup> New York Laws, 1845, c. 252.



the exercise of eminent domain, freedom of speech, were each protected by appropriate clauses. Some old statutes reënacted in the Revised Statutes of 1829, regarding tenures of real estate, were incorporated in the first article of the constitution, against the general protest of the lawyers, who thought them supererogatory. All feudal tenures were again declared abolished, saving, however, all rents and services. So all lands were again declared allodial, but subject to escheat. All fines, quarter sales, or other restraints upon alienation were again made void. Leases of agricultural lands for longer than twelve years were made void for the future. All these provisions, in so far as they affected vested rights, were known to be quite inoperative, and the only really new provision of importance was directed against long farm leases in the future. The old farm leases which were valid in their inception had to be dealt with by very different modes from a constitutional referendum. For this reason some of the lawyers thought that these clauses of the constitution betokened insincerity. The provisions as to the land law, however, had the effect of making the policy of the State, in the future, very clear, and of prohibiting thenceforth long leases of farm lands. Even these clauses of the constitution might not, however, have proved effectual had not the new methods of transportation acted as auxiliaries and made better and cheaper lands more accessible to the agriculturist; so that the tenure of large districts of farm lands of New York had to be revised by the consent of the proprietors themselves, through commutations and compromises, which naturally followed the new economic rather than the new constitutional conditions. Article II carefully regulated the right of suffrage, conferring the ballot on all white male citizens, in conformity to the amendment of 1826, already noticed. Negroes, unless freeholders, were still excluded from the suffrage, and so remained until the adoption of the fifteenth amendment to the federal constitution, the electors of the State having refused in the years 1846, 1860, and 1869 to relieve them of this disability. In 1874, by constitutional amendment, the electors, however, removed the ban. Slavery after the year 1827 had been abolished by a statute of 1817, while all persons were by statute born free in this State after July 4, 1799. By Article III of the constitution the legislative power, vested, as theretofore, in the assembly, was regulated. The senate was reduced to thirty-two members and the legislature to one hundred and twenty-eight.

As space forbids following minutely the extensive alterations of the fundamental law by the convention of 1846, attention must be directed to the important features only of the new organic law. By Article IV it was provided that a candidate for governor might be a naturalized citizen, and he was no longer required to be even a free-



holder. This provision well indicated the very serious change which public sentiment had undergone in the preceding twenty years. The time when property was regarded as the easiest test of a man's capacity or respectability had passed away; so naturalized foreigners were no longer, as a body, to be deprived for that reason of the supreme honors of the State. Such changes were no doubt reasonable, as the electors at large might be depended on, without artificial restrictions, to choose the great State officers wisely. In other articles of the constitution the general power of appointment to public office, vested by the constitution of 1821 in the governor or in the senate and assembly, was given directly to the people. Even judicial offices were made elective without any formidable protest in the convention. This feature was not so novel as it might seem, for a majority of the members of the old Court of Errors (the senators) had been elective since the foundation of the State government, and the Court of Errors had, on the whole, in the past proved more satisfactory to the people at large than the other courts of record where the judges were appointed. It was well understood by the convention of 1846 that the people desired an elective judiciary, and were dissatisfied with the ancient appointive system. Many plans were suggested in the convention, but nearly all favored a judiciary partly or wholly elective. The judiciary article of the constitution of 1846 made great changes in the judicial organization of the State, and was carried by a small majority. A new appellate court of last resort in cases civil and criminal was created, to be called the Court of Appeals, and with its erection the old Court of Errors was to disappear. Four of the justices of the new Court of Appeals were to be elected for a term of four years, and another four were to be selected from the justices of the Supreme Court. Instead of the old Supreme Court and Court of Chancery a new Supreme Court was established, having general original jurisdiction in law and equity. In order to prevent centralization of judicial authority at the capitol, this new court was divided into eight districts, of which the city of New York was one. The judges were to be elected in the districts. Thus the great court of original jurisdiction was in this way constituted on the basis of county rather than of State lines; the evident object being to diffuse and not to centralize judicial influence and responsibility. With an elective judiciary the district plan for courts of original jurisdiction was inevitable.

One of the objects of the convention being to reform the laws relative to the debt, finances, and property of the State, most minute directions were contained in the new constitution, and very considerable limitations were imposed, in this respect, on the powers of the legislature. No compromises with certain debtors of the State were

to be tolerated; sinking funds were to be created; the State salt-mines and canals were not to be sold; the State credit was not to be loaned. Time has justified the wisdom of all these limitations. The subject of franchises to corporations also received attention, and it was provided that private corporations could not be formed in the future except under general laws, subject to alteration at the legislative will. In conformity with the popular demand, the stockholders in such corporations were made personally liable for debts in proper cases. Certain banking principles looking to the security of note-holders were fixed in the constitution itself. Many other minute provisions, some of which may be noticed hereafter, were contained in the constitution. Thus the policy of the State, touching certain spheres of legislative action, was so fixed by the people as to be beyond the control of the ordinary legislative body. This course was then more novel than it has since become in this country. On November 3, 1846, the new constitution was adopted by a vote of 221,528 to 92,436. In conformity to the terms of the instrument which made future amendments more easy than did that of 1821, the constitution of 1846 has been since amended in several particulars, but its general features remain undisturbed. The policy of these amendments has been to reserve more of the legislative power to the people, and further to limit the powers of the legislature. In 1874 the term of office of the governor was extended from two to three years; his powers as chief magistrate under the constitution of 1846, as amended, remained substantially as under the former constitution, being, however, somewhat more prescribed with each organic change. In the year 1858, a proposition for a new constitutional convention was defeated by the people; but in 1866, steps were taken, as directed by the constitution, toward a convention, and on April 23, 1867, delegates were chosen who convened at Albany, June 4, 1867. Among them were many persons of distinction and attainment. Notwithstanding that the population of the State had increased from 1,372,111 in 1820 to nearly 3,000,000 in 1846, the people evinced greater satisfaction with the constitution of 1846 than many had expected. The constitution framed by the convention of 1867 was, with the exception of the judiciary article, defeated by a vote of 290,456 against, to 223,935 for, its adoption. By the particular amendment then adopted, some of the city courts were made constitutional courts, and thus freed from legislative interference. The other changes were not extensive. The general policy of the constitution of 1846 in making the great courts of general original jurisdiction decentralized or local courts, was, in 1867, and again in 1880, confirmed by provisions compelling the Supreme Court justices to reside within their districts, although any Supreme Court justice might, if designated, sit in any county of the State. In the

year 1873 the people rejected an amendment looking to the future appointment to office of the justices of the Court of Appeals and the Supreme Court. In 1874, and again in 1884, the powers of counties, cities, towns, and villages to incur indebtedness were restricted by an amendment to this end. In 1882 the canals of the State were made free by constitutional amendment. In 1874 two new articles were added to the constitution of 1846: one of these was directed against bribery of public officials, and the other provided that all amendments to the constitution should be in force from the first day of January succeeding the election at which the same were adopted.

Of all the changes instituted by the constitution of 1846, those creating a new judicial establishment, elective and directly responsible to the people, were the most profound. Next in importance were those provisions concerning the codification of the law and the further direction to the legislature to appoint commissioners to revise, simplify, and abridge the practice, forms, and proceedings in all the courts of justice of the State. Up to this time the courts in the State and their practice and proceedings had been survivals, and antedated in whole or in part the war of independence. It was very obvious, from the articles of the new constitution, that the people desired a revolution in these ancient institutions—an inference further emphasized



*Roscoe Fenton King*

by its permission to the legislature to erect new courts of conciliation. Such new tribunals were the first English courts contemplated in New York which were not patterned after the law-courts in England. The scope of the political revolution intended by the people was further shown by the innovation which permitted a naturalized citizen to become governor, and which took away from the executive the appointing power. A policy of governmental decentralization was disclosed also by those provisions which permitted the legislature to vest a share of the legislative power in boards of supervisors of counties. This constitution provided that senators were to be chosen for two years instead of for four years, and by smaller districts, thus enlarging their direct responsibility to the people. Members of the lower house were to be chosen by single districts, and no longer by the counties as a whole. This single-district system was an innovation, and had a tendency to do away with the old county as a political unit. The argument for it was that in large

communities, such as cities, the district system provided for a more direct and responsible representation. It was provided also that these districts were to be reapportioned from time to time so as to provide for more equal representation, as populations were shifted or augmented. While the argument in favor of this single-district system was no doubt sincere, it has met with great opposition and censure from many who, while ardently attached to representative institutions, have believed the ancient county a more dignified and proper political unit than a district. In the city of New York the single-district plan at first met with no favor, and it may be doubted whether the opinion of the more thoughtful has had reason to change the earlier opinion.

In addition to the organic changes tending to do away with a centralized State government, and to reserve greater power, judicial, legislative, and executive, to the people, should be noted that article of the new constitution which provided for its future amendment. Under the constitution of 1821, a majority of the first and two thirds of a second legislature must favor the change before a proposed amendment could be submitted to the people. By the constitution of 1846, a bare majority vote of approval sufficed to cause such submission. The constitution of 1846 directed that in the year 1866, and in each twentieth year thereafter, and at such other times as the legislature provided, the question of holding a constitutional convention must be submitted to a direct vote of the people. To many these last provisions furnish the greatest evidence of change in the nature of the State government as first established. The system constructed by the earlier constitutions may be said to have been one by which the government was delegated to certain officers, executive, legislative, and judicial, who were invested with general and more or less permanent powers. These officers were the law-makers and administrators of the system. But by the new constitution such delegation was not only more limited in scope, but greater power was reserved to the people themselves to act more frequently by constitutional enactment on a large class of questions. The student of institutions has detected in this constant reference of important laws to the people themselves, an advance in the nature of popular institutions—the *referendum* being the greatest height to which popular government can obtain among large masses of people. Such legislation by the people themselves was not contemplated by the founders of the State government, either when they created their permanent judicial establishment or invested their executive with the magisterial and legislative powers of the former crown governors. Nor did the founders of the State government dream that the investment of the legislature with the entire legislative power—an achievement which then re-



fleeted the success of the Revolution — would some day have to be guarded by reservations from the legislature itself.

The constitution of the State government formulated by the convention of 1846 was adopted by a vote of 221,528 in its favor to 92,436 against it. This new organic law went into effect on January 1, 1847, and with few modifications it still remains in force. The nature of the judicial establishment created by this constitution was in substance as follows: A court of final appellate jurisdiction, known as the Court of Appeals, and already described, was substituted for the old Court of Errors constituted in the upper legislative house, attended by the great common-law judges and the chancellor. It should be said that in the whole history of the commonwealth of New York from the time when final appeals lay to great tribunals in Europe down to the present, no other appellate court connected with New York has given greater general satisfaction to the people than the Court of Appeals erected under the constitution of 1846 and continued and reestablished by constitutional amendment. The courts of original jurisdiction created under the frame of government established in 1846 have generally preserved the historical continuity. The new Supreme Court, for example, which is the great court of original jurisdiction, preserved the jurisdiction of the former Supreme Court of Judicature of the State and province, but added to it that of the Court of Chancery. In other words, the two former courts have been merged into one great court, whose judges possess *sub modo* the jurisdictions of the old chancellor and of the supreme justices of the State, who in turn had the power of the chancellor and of the justices of the King's Bench, Common Pleas, and Court of Exchequer in England.<sup>1</sup> The proceedings of the new supreme court of general jurisdiction were soon much simplified by the adoption of a uniform system of pleading, evidence, and trial in all actions in the new court, whether such actions were formerly denominated legal or equitable. Without such auxiliary provisions the fusion of the former courts of law and equity in one court would have been more difficult. As the nature of this fusion possesses great historical importance, it will be again noticed below. In addition to the new Supreme Court, the courts of record provided for under the constitution of 1846, or created by the legislature pursuant to such constitution, were, as formerly, of several orders. There were minor civil courts for the different counties, which were known, as formerly, as county courts, and there were likewise civil courts for cities, generally styled city courts, or superior courts. In addition to these were the several criminal courts for counties and municipalities, such as courts of sessions and recorders' courts. The jurisdictions of all these courts were pre-

<sup>1</sup> Section 217, Code of Civil Procedure.



scribed by law, and sometimes had cross or remote references to the jurisdiction of the courts of the province of New York which preceded them. Where the jurisdiction of any of the new courts was fixed by the constitution itself, it was beyond legislative interference; but when such court was one created by the legislature, its jurisdiction was subject to alteration by the legislature. In addition to the county and municipal courts were certain civil courts, not of record, intended for the trial of small or speedy causes. In the counties these courts were generally styled the courts of the justices of the peace; but in the cities, district courts. In addition to these small courts not of record there were created under the constitution of 1846 certain criminal courts of lesser jurisdiction, with power to try minor offenses, or to bind offenders over to keep the peace. These courts were known



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generally as police or justices' courts. The jurisdictions of all the lower courts in the State may be styled statutory. The Supreme Court, under the constitution, alone possessed a common law jurisdiction, or one defined most largely by reference to judicatories having their rise and origin in the common law of England, as it stood before the British oc-

cupation of this commonwealth. In this respect the Supreme Court possessed a certain historic significance not possessed by even the appellate court. It also afforded the gateway to the profession of the law, as it licensed for all courts of the State all attorneys and counsel, who by the new constitution might be any male citizen of the age of twenty-one years, of good moral character, and proper attainment. In addition to the courts denoted, the constitution of 1846 provided expressly for courts having jurisdiction of wills, testaments, cases of intestacy, and probate matters generally, in counties possessing a population of over forty thousand inhabitants. In smaller counties the county judges, who had a probate jurisdiction conferred by the constitution itself, were to act exclusively as surrogates. Surrogates' courts have now been generally created for all the counties of the State. Occasional courts of impeachment were also

created and limited by the constitution of 1846, as by all preceding constitutions of the State. Such is the outline of the new judicial establishment of the State under the constitution of 1846. The State courts possessed complete and entire jurisdiction throughout the State, and, except as modified by the federal constitution and acts of Congress conferring exclusive jurisdiction of certain prescribed cases on the federal establishment, the range of the jurisdiction of the State courts covered the entire field of judicial inquiry. The jurisdiction of the lesser courts was confined to certain cities and counties, and their process could not run beyond the limits prescribed.

The constitution of 1846 is also notable for its effort to confer upon the people a system of laws which should not afford such persistent evidence of the former colonial subordination. Although the constitution elsewhere declared that such parts of the common law as did form the law of the colony on April 19, 1775, and not since abrogated, should remain in force (together with such acts of the colonial legislature, of the congress of the colony, and of the former legislatures of the State), but subject to future legislative alteration, yet it directed the first legislature of the State thereafter to appoint three commissioners, whose duty it should be to reduce into a written and systematic code the whole body of the law of the State, or so much thereof as to the commissioners seemed practicable and expedient. To many persons this was a welcome announcement that the State had entered a more complete phase of independence, and that it was preparing to make its laws of purely domestic origin, and to avoid the necessity of constant reference to the laws of England. From the context of the constitution it was exceedingly plain that the people of the State demanded the codification of their laws. The judiciary article of the constitution of 1846 contained also some provisions obligatory upon the proceedings in the new courts, such as that "the testimony in equity cases shall be taken in like manner as in cases at law"; but there was considerable ambiguity about the provisions concerning the Supreme Court, which induced some of the older school of lawyers to hope that the practice in the new Supreme Court might still continue to reflect the former antinomy between law and equity in some such manner as now prevails in the federal courts of this country. In January, 1847, David Dudley Field of New York published a tentative treatise entitled "What shall be done with the practice of the courts? Shall it be wholly reformed? Questions addressed to lawyers." A memorial followed, largely signed by lawyers of the State, urging the legislature to abolish the old forms of action, and to provide for a uniform course of proceedings in all cases, whether of legal or equitable cognizance. On the 8th of April, 1847, the legislature passed an act appointing Arphaxed Loomis, David

Graham, and Nicholas Hill commissioners on practice and pleadings. Mr. Hill resigned in September following, and Mr. David Dudley Field was appointed in Mr. Hill's place by a resolution of the two houses of legislature on September 29, 1847. On February 29, 1848, the first instalment of a code of civil procedure was enacted, to take effect July 1 following. The completed code of civil procedure was reported December 31, 1849, but its adoption was delayed. On the same day the code of criminal procedure was reported, but it was not adopted at that time. That instalment of the code of civil procedure which was enacted abolished all distinction between actions at law and suits in equity, and substituted one form of action for the protection of private rights, or the redress of private wrongs. At this time this single reform was the greatest ever accomplished in the remedial law of an English-speaking people. Its design and accomplishment were largely if not exclusively due to the efforts of Mr. Field, one of the most lucid of all legislative draftsmen, as well as one of the most powerful and original thinkers ever seen in the ranks of English-speaking lawyers. Unfortunately, the symmetry and excellence of Mr. Field's legislative work have been much marred either by the action of the legislature, or by its failure to adopt the entire scheme of reform as reported by the codifiers. Not until April 6, 1857, were efforts to continue the reform contemplated by the constitution of 1846 successful. In that year an act was passed revising a former code commission. The earlier commission had failed to codify the whole body of the law of the State, or to perform any part of the task assigned to them by the legislature.<sup>1</sup> The act of 1857<sup>2</sup> appointed David Dudley Field, William Curtis Noyes, and Alexander Bradford commissioners to codify so much of the law as was not included in the reports of the commissioners on pleading and practice reported to the legislature in 1850. On April 10, 1860, a political code was accordingly reported to the legislature. On March 30, 1861, a book of forms adapted to the necessities of the practice code was reported, but not adopted. The penal code was reported in December, 1864, and the civil code on February 13, 1865.

The civil, criminal, penal, and political codes, together with the book of forms, would have completed the entire scheme of reform contemplated by the constitution of 1846. But of these great works only the penal and criminal codes have passed into laws.<sup>3</sup> The civil and political codes have up to this time failed of enactment. For whatever reason these completed codes have failed to become laws, it cannot be doubted that their enactment would have relieved the jurisprudence of the State from many anomalies and archaisms peculiar to that part of the law of England which we have seen to be the law of

<sup>1</sup> Chapter 49, Laws of 1847; Chapter 289, id.; Chapter 312, Laws of 1849.

<sup>2</sup> Chapter 266.

<sup>3</sup> Chapters 442 and 676, Laws of 1881.

the former province of New-York. The whole body of the law of the State would then have been reduced to a written form, with the effect, as many believed, of permitting the energies of the bar to be directed to a higher and more philosophical exposition of principles than is permissible when the text of the law is unwritten and deduced only from cases and precedents.

As the law stands,—several of the codes not having been enacted,—the private jural relations of all the citizens of the State are now determined either by certain inhibitions contained in the written constitutions of government related to private law, or by the acts of the legislature of New York, including the Revised Statutes (frequently amended by later legislatures of the State), or lastly by the common law of the province of



*Andrus Hulse*

New York, as it stood on the date of the battle of Lexington, in the year 1775, and as since altered by legislation. The constitution of 1846, adopting the phraseology of the constitution of 1821, provided also that the acts of the old assembly of the province, and the resolutions of the congress and of the convention of the State in force April 20, 1777, and not since repealed or altered, should also form part of the fundamental law; but as a matter of fact the acts of the provincial assemblies were all repealed in the year 1828, while those acts of the convention and the resolutions of the congress of any permanent effect had by the year 1846 been revised by statutes of the State, so that the common law and the legislative acts of the State government may be roughly said to constitute the entire body of the substantive law of the State in force since 1846. The common law so in force has of late years received so much judicial interpretation that almost all its leading institutes appear in the printed reports of the adjudications of the State courts. That such a form for the great body of law of the State is now at all what was contemplated by the constitution of 1846, cannot be pretended. Yet, that the contents and substance of the law as it actually exists are adequate at present to all the exigencies of a highly civilized State, experience affirms. To indicate more fully the nature of the institutes of this great body of private law would require greater technical precision than the limits of this outline permit. By force of the constitutional definition of the law of the State, the remnant of the old



Dutch law which had become a part of the common law of the province, still remains, in very limited instances, a rule of particular property held under Dutch ground-briefs, or by Dutch subjects under the articles of capitulation of 1664. Otherwise the law of New Netherland has been repealed, abrogated, or wholly displaced. In many instances the common law of the province of New York, referred to by the constitution of 1846 as continuing in effect under that constitution, has until a comparatively late period regulated wholly many of the domestic relations in this State, such as husband and wife, parent and child, guardian and ward, and master and servant. But of late years the common law has been modified by such statutes as the married women's property acts, and other acts in conformity with the trend of modern thought and opinion. On March 2, 1870,<sup>1</sup> efforts were again made to accomplish the work directed by the constitution of 1846, and remaining unperformed. The new commissioners, of whom Mr. Field was not one, were directed to incorporate into and make part of their revision the proposed codes reported to the legislature by the earlier commissions. The last commission proceeded to revise the early code of procedure: the other portions of their task have remained unfulfilled. Thus, up to the present time, the complete codification contemplated by the constitution of 1846 has not been accomplished.

Having now outlined the form of the public and private law of the State as it exists at the present day, a word of application may be made to the status of a citizen of the city of New York. The common law of the State is the same in all parts of the territory under the jurisdiction of the State, there being no portion subject to a different common law from the rest. Of the statutes of the State some are general in application, while others, by limitation, apply to specific communities, such as the city of New York. Thus, those inhabiting the city of New York are, as a rule, subject to a common law of universal application throughout the State, and to a statute law which may or may not be general in operation. Of the statutes of the State not everywhere operative, the municipal charters of the city of New York afford good examples; for these charters contain not only franchises to the city as a corporation, but also occasional rules for the government of the citizens within the jurisdiction of such municipal corporation. The writer has elsewhere noticed the Dongan and Montgomerie charters.<sup>2</sup> At the adoption of the first constitution of the State, the Montgomerie Charter of 1730 was in full force, and the State constitutions of the present century have provided that nothing therein contained should annul any charters to bodies politic and corporate made prior to the 14th of October, 1775. Until the year 1830 the Montgomerie Charter, as somewhat modified

<sup>1</sup> Chapter 33.

<sup>2</sup> Chapter XIV, Vols. I and II, Memorial History.



by statute, remained the fundamental charter of the city. In that year an amended charter was adopted. In June, 1829, the common council had recommended the citizens to choose delegates to a convention for the purpose of amending and revising the ancient charter. Steps were accordingly taken under the advice of Ex-Chancellor Kent, and on the 7th day of April, 1830, at the request of a majority of the citizens, the legislature passed an act "to amend the Charter of the City of New York."<sup>1</sup> In this act the old charter is recognized as subsisting, in so far as it is not inconsistent with the new act's own provisions. On April 2, 1849, July 11, 1851, April 10, 1852, April 11, 1853, and at other times, further amendments were made to the charter. But on April 4, 1857, most of the more recent amendments were repealed, and chapter 446 of the laws of 1857 was substituted for them. It was, however, still provided that the provisions of the royal charters should continue in force where not abrogated or inconsistent with chapter 446 of the laws of 1857.

In the year 1873<sup>2</sup> an act was passed "to reorganize the local government of the City of New York," which made extensive changes in the administrative part of the city charter, repealing various amendments enacted in the present century, but still continuing in force those provisions of the ancient royal charters then operative and not inconsistent with its provisions. In 1874 the city's boundaries were much enlarged,<sup>3</sup> and the power of the separate county government was transferred to the city authorities.<sup>4</sup> In the years 1879 and 1880, the legislature authorized a revision of the special and local laws affecting New York city, and made such revision presumptive evidence in the New York courts of justice of all special or local laws in force in the city of New York.<sup>5</sup> In 1881,<sup>6</sup> most of the local acts affecting New York city passed subsequent to 1784 being contained in the revision mentioned, were otherwise repealed. In 1882 all the laws affecting public interests in the city of New York, having been revised, were consolidated in one act known as the "consolidation act,"<sup>7</sup> and it was thought that all future laws affecting the city of New York should refer to this act. But such has not been the case, and various acts affecting the city have been since passed without any special reference to the consolidation act of 1882. Curiously enough, the ancient royal charter known as the Montgomerie Charter of 1730, in so far as it has not been swept away by inconsistent legislative enactment, remains in force, having never been expressly repealed. Thus, though the nature of the city government in most of its administrative features has completely changed, that feature of the Dougan Charter which, in the year 1686, vested the powers of local government

<sup>1</sup> Chapter 122, Laws of 1830.

<sup>2</sup> Chapter 335, Laws of New-York.

<sup>3</sup> Chapter 411.

<sup>4</sup> Chapter 304.

<sup>5</sup> Chapters 594 and 595, Laws of 1880.

<sup>6</sup> Chapter 537.

<sup>7</sup> Chapter 410, Laws of 1882.

in a mayor, alderman, and commonalty, exists at the present time. Notwithstanding the many changes introduced by the legislature in the present century, the skeleton of the city government possesses a very considerable antiquity. To give in detail the nature of the changes actually instituted would exceed the limits prescribed for a mere outline, and has not been attempted.

In conclusion, it may be remarked that in the State of New York popular sovereignty, which attained its highest phase under the State constitution of 1846, has been developed somewhat differently from that in the other original States, where it was often observable, even before the war of independence, in town and city governments. But in the city of New York, down to the war of independence, the crown government exercised unusual influence and authority. After the American Revolution the State government succeeded to this power over the city government. Not until 1834 were the mayors of this city elected by the inhabitants of the city. At the present time the old legislative powers of the municipal authorities have almost dwindled into insignificance, having been largely assumed by the legislature of the State, so that the measure of freedom now enjoyed by the inhabitants of this city is determined, not by the history and the laws of the city itself, but by those of the State, although the history of the city long antedates that of the State. By a change instituted in the State constitution of 1846, restoring to the clergy eligibility for public office, and by the fifteenth amendment to the federal constitution, forbidding any State to abridge the right to vote on account of race, color, or previous condition of servitude, the political equality of all citizens of the State is absolute. Notwithstanding the annual introduction into the State and city of a large number of persons of foreign birth, wise naturalization laws have incorporated most of them into the very heart of the body politic, so that they too are amenable to the same laws and possess the same rights as the descendants of the original settlers, thus avoiding many complications peculiar to those mixed States where extensive consular jurisdictions are recognized. By the fourteenth amendment to the federal constitution the children of foreigners, if born in the United States, are citizens of the State where they reside. Thus most of the inhabitants of the city of New York are citizens, and all citizens possess precisely the same rights and are subject to the same law. Under such conditions there is happily no excuse for political discontent. The object of the founders of the State has been in this respect fully consummated. Yet to assert that the condition of the law and the constitution is perfect would be an exaggeration; but the assertion that there has been and is, on the whole, a steady and healthy growth of law and liberty here, would be one which few will deny.

## THE CONSTITUTION OF 1894.



THE present constitution of the state, as formulated by the constitutional convention of 1894 and ratified by the people at the general election of that year, is the final issue of a protracted and bitter partisan struggle, which will always be memorable in New York political history.

By the terms of the constitution adopted in 1846, the legislature was required, in each twentieth year thereafter, to submit to the people the question whether a convention should be summoned for purposes of constitutional revision. This question was duly referred to the popular verdict in 1866, and, an affirmative vote being given, a constitutional convention assembled in the ensuing year, whose amendments were, however, with a single exception, rejected at the polls. Thus the work of systematically reconstructing the constitution was postponed to await the expiration of another period of twenty years. Meantime the need of various changes was felt to be so important that in 1873 a "constitutional commission" was organized; and the amendments which it drafted—eleven in number—were subsequently ratified by the legislature and accepted by the people. Yet the constitutional improvements obtained through this extemporized commission, and others effected by means of separate amendments, were generally regarded as quite inadequate; and accordingly when, in 1886, the people were again asked to pass upon the question of holding a constitutional convention, they assented to the proposal with substantial unanimity, only 30,000 negative votes being cast in a total of more than 600,000.

For years the conditions determining the political control of the state had presented a curious anomaly. The democrats, although frequently able to elect the governor and other executive officers on the general state ticket, had been hopelessly in the minority in the legislature. The existing legislative apportionment, giving the republican rural districts a considerable relative preponderance in representation over democratic New York City and Brooklyn, rendered it impossible, in all ordinary circumstances, for the democrats to obtain a majority in the senate and assembly. This state of affairs was viewed with great disgust by the aggressive democratic leaders, and they impatiently awaited an opportunity for changing the apportionment in the interest of their party organization.

At the session of 1887 the democratic governor was, as usual, con-

fronted by a republican senate and assembly. The legislature in due time presented to him a bill providing for the election of delegates to the proposed constitutional convention. It was understood by both parties that the convention, when held, would establish a new basis of apportionment, and therefore that the party controlling the majority



WALL STREET IN 1892

of delegates would for many years to come enjoy a marked advantage in legislative representation. It was charged by the democrats that the constitutional convention bill of the legislature of 1887 was so drawn as to insure republican ascendancy in the coming convention. Governor Hill refused to endorse a scheme so unfavorable to his party, and



vetoed the bill. Attempts made in the next five years to arrange a plan for summoning the delayed convention were equally unsuccessful, the democratic governor and republican legislature being still unable to reconcile their differences. It was not until 1892 that an agreement was arrived at. The democrats had at last gained the upper hand in both the senate and the assembly, and a new measure, which, it was supposed, would give them full mastery of the convention, was passed at the sessions of 1892 and 1893 and signed by the governor. But the fall elections of 1893 resulted in an overwhelming republican victory, and of the 168 members of the convention only 65 were democrats. The number of delegates originally chosen was 175, of whom 15 were



*World  
Building.*

*Sun  
Building.*

*Tribune  
Building.*

*Times  
Building.*

*Press Office,  
Fetter Building.*

"NEWSPAPER ROW," 1892.

delegates at large and the remainder represented the senate districts; but in consequence of deaths, resignations, and the unseating of members declared fraudulently elected, the total was reduced to 168.

The convention assembled in Albany, May 15, 1894, and continued in session until September 29. Although its membership included a number of eminent lawyers, it was not, on the whole, a specially noteworthy representative body. Its officers were: President, Joseph H. Choate; 1st vice-president, Thomas G. Alvord; 2d vice-president, William H. Steele; secretary, Charles E. Fitch. Its work was distributed among twenty-seven regular committees. It had under consideration more than four hundred amendments, of which it adopted thirty-



three; and, in addition, much obsolete matter was stricken out of the old constitution. The revised instrument framed by the convention was comprised in fifteen articles, which, having been ratified by the people on November 6, 1894, took effect as the organic law of the state on January 1, 1895.

Public interest in the convention's transactions centered in its readjustment of the legislative apportionment. The membership of the senate was increased from 32 to 50, and that of the assembly from 128 to 150, and the boundaries of each district were defined. It was provided that these boundaries should not be disturbed until 1905, when a new apportionment should be made on the basis of an enumeration of the inhabitants of the state then to be taken, but with the proviso that New York City should in no case have more than one-third the members of the senate, or New York City and Brooklyn together more than one-half. The new apportionment was strenuously objected to by the democratic members, on the ground that it was cunningly devised to perpetuate republican control of the legislature in the face even of heavy democratic majorities in the state at large.<sup>1</sup> A committee of the republican members, in an address to the people, made a spirited reply to these attacks. In justification of the alleged unfairness toward the democratic strongholds, the republican members said:

Before another constitutional convention presents its work to the people it is probable that the cities of New York and Brooklyn or the greater city formed by their union will contain a majority of the inhabitants of the state. If the present system continues they will be able to elect the governor, the state officers, a majority of the senate and a majority of the assembly. Both by force of numbers and by the multiplied power of compact organization and cohesion among the representatives from a single county responsible to a single local political organization, they will be able, absolutely, to control the government of the state. What will be the consequence of compelling the vast region extending from the City of New York to the St. Lawrence and to Lake Erie, with its varied interests, sentiments and opinions, not over well understood by the inhabitants of the city, to submit to such a domination? Would such an arrangement conduce to the permanent welfare of the state? Our opinion is that it would not; and that the provision which secures to the whole state outside of the city a bare half of one house of the legislature, leaving to the city such control as its numbers may give over the other house and over the executive department, is a slender enough safeguard against so unfortunate a result.

We believe the provision to be sound in principle; that somewhere in every representative government there should be a recognition of variety of interest and extent of territory, as well as of mere numbers united in interest and location.

Such a departure from the rule of strict numerical representation is recognized by the constitution of the United States in the organization of the senate, by the constitution of the State of Pennsylvania in limiting the representation which the city of Philadelphia may have in its senate to one-sixth of its members, and by the

<sup>1</sup> The following is a specimen of these democratic accusations: It was asserted that fifteen of the new senate districts, having a population 459,672 less than fifteen other districts, were so constructed as to over-

represent republican districts by 130,348 and leave unrepresented a population in democratic districts of 131,287. See N. Y. *Evening Post*, October 6, 1894.

constitution of the State of Maryland, in limiting the representation which the city of Baltimore may have.

Similar provisions have been adopted by the State of Ohio affecting Cincinnati and Cleveland, the State of Missouri affecting St. Louis, the State of Rhode Island affecting Providence, and by other states of the Union having large cities. It is the rule rather than the exception throughout the Union.

Without reference to the merits of the controversy, it is unquestionable that the treatment of the apportionment question by the convention of 1894 tended to aggravate matters, and there is consequently every probability that the next constitutional convention will be similarly agitated by issues of mere partisan concern. Fortunately, however, its assembling will not be contingent upon the political circumstances of the day; for the new constitution explicitly declares that if in 1916 the people decide in favor of a convention, the contemplated body shall come together in the year following.

In addition to the legislative apportionment various political amendments were adopted by the convention, which were received with general approval. The most important of these was one providing for the separation of municipal elections from the state and presidential elections in the cities of New York, Brooklyn, Buffalo, Rochester, Syracuse, Albany, and Troy. It was arranged that municipal officers in the foregoing cities shall henceforth be chosen in the odd-numbered years, and the terms of the state officers were reduced from three years to two, causing state elections to fall uniformly in the even-numbered years. The principle of civil service reform was embodied in the fundamental law, by requiring that appointments and promotions be based upon merit, and be ascertained, so far as practicable, by competitive examination. All state officers and members of the legislature were forbidden to accept railway passes or gratuitous service from telegraph and telephone companies. Provision was made for extending the gubernatorial succession by authorizing the speaker of the assembly to perform the duties of chief-executive in the event of the death or incapacitation of the governor and lieutenant-governor. Correction of abuses in legislative procedure was sought by directing that all bills shall be printed in their final form at least three days before their passage, prohibiting riders on appropriation bills, and vesting in the municipal authorities of the larger cities the right to review bills affecting their communities. An effective blow was dealt at pre-election naturalization activities by prescribing a period of ninety instead of ten days of citizenship before the right of franchise can be exercised. The office of coroner was abolished by omitting all mention of it.

The convention, besides manifesting a friendly disposition toward moderate political reforms, evidenced certain rather decided radical sympathies. An amendment was inserted specifying that no "pool-selling, bookmaking, or any other form of gambling," shall "hereafter

be authorized or allowed within this state."<sup>1</sup> A proposed amendment permitting the question of woman suffrage to be submitted to the people, although voted down, received significant support, 59 votes being recorded in its favor.

The crowning work of the convention was its thorough reorganization of the judiciary system of the state.<sup>2</sup> This was undertaken, and prosecuted throughout, in the interest of promoting the more speedy, uniform and effective administration of justice, and the resulting changes have contributed materially toward the relief of the Court of Appeals, the diminution of trial calendars generally, and the simplification of litigation—reforms for which there was a pressing need.



MADISON SQUARE GARDEN.

The former constitution of the Court of Appeals was left undisturbed in all respects, and the only alterations affecting this tribunal were with a view to lightening its burdens and limiting it to its proper function of declaring and settling the law. The Supreme Court was enlarged by the addition of twelve new justices—three in the 1st judicial district, three in the 2d, and one in each of the others. The state was divided into four departments—the county of New York constituting the 1st,—to take the place of the nine general terms of the Supreme and Superior Courts. The 2d divi-

sion of the Court of Appeals was abolished, and in its stead an appellate division of the Supreme Court was created, composed of seven justices in the 1st department and five in each of the others. No more than five justices are to sit in any case, four are necessary to a quorum,

<sup>1</sup> In their address to the people from which we have already quoted the republican members defended this amendment in the following terms:

"The passion for gambling to which the system of lotteries formerly ministered has found fresh opportunity under the so-called Ives pool bill, and under color and pretext of betting upon horse-races, is working widespread demoralization and ruin among the young and weak throughout the community. . . . It is claimed that this [anti-gambling] provision will array in opposition to the proposed constitution a great and unscrupulous money power, but we appeal to the virtue and sound judgment of the people to sustain the position which we have taken."

<sup>2</sup> The judiciary committee of the convention was composed of the following members: Elihu Root, New York county; Louis Marshall, Onondaga county; Henry J. Cookinham, Oneida county; Tracy C. Becker, Erie county; J. Rider Cady, Columbia county; John F. Parkhurst, Steuben county; John I. Gilbert, Franklin county; J. Johnson, Kings county; Daniel H. McMillan, Erie county; Nathaniel Foote, Monroe county; C. H. Truax, New York county; Roswell A. Parmenter, Rensselaer county; Edwin Countryman, Albany county; John M. Bowers, New York county; De Lancey Nicoll, New York county; Almet F. Jenks, Kings county; and George H. Bush, Ulster county.

and the assent of three is required for a division. From all the justices elected to the Supreme Court the governor is to designate those who shall constitute the appellate division in each department, and he is also to select the presiding justices.

With the beginning of 1896 the Court of Common Pleas of the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo, and the City Court of Brooklyn were abrogated and their jurisdiction transferred to the Supreme Court. Circuit Courts and Courts of Oyer and Terminer were likewise done away with, and the Supreme Court was appointed to administer their functions. The jurisdiction of the Court of Appeals is henceforth limited to the review of questions of law, except in cases where the judgment is of death. No unanimous decision of the appellate division of the Supreme Court that there is evidence supporting a finding of fact or a verdict not directed by the court can be reviewed by the Court of Appeals; but the appellate division in any department may allow appeal upon any question of law that in its opinion ought to be reviewed by the Court of Appeals. Courts of Sessions, except in New York county, were abolished, but the existing Surrogates' Courts were continued.

The main features of this reorganization are, first, the relief of the Court of Appeals by the establishment of an intermediate appellate tribunal, and second, the correction of the confusing and undesirable multiplication of courts in the larger cities. Thus a single great court of original jurisdiction—the Supreme Court—was designated to do the work formerly divided among a variety of special courts. To quote the words of one of the prominent members of the judiciary committee of the convention, "By abolishing these courts, questions of jurisdiction which have hitherto been a source of confusion and difference are set at rest, and litigants are not deprived of their rights because their counsels have erred in the choice of a tribunal. But what seems to constitute a reform even more beneficial lies in the fact that no litigant shall be permitted to select his own tribunal. Heretofore the plaintiff was at liberty to do so, while the defendant was compelled to respond in the court chosen by his opponent. Hereafter plaintiff and defendant will be on an equal footing."<sup>1</sup>

A proposal to return to the old appointive method in the choice of judges was emphatically rejected by the convention. The age limit of seventy years was retained, but the system of pensions for retiring judges was abandoned. An amendment shortening the terms of judges from fourteen to eight years was defeated by a large majority.

The statutory provision limiting the right of recovery for injuries causing death to \$5,000 was done away with. Another important change of somewhat similar character was the abrogation of the pecuniary limitation of \$500 formerly fixed for cases appealable to the Court of Appeals.

<sup>1</sup> Louis Marshall, in the *N. Y. World*, October 7, 1894.



The political and judiciary alterations, which we have sketched in brief, constitute the distinctive features of the new constitution. Its miscellaneous provisions are of comparatively little interest. The most conspicuous is, probably, the prohibition of the contract system of convict labor. This amendment took effect on the 1st of January, 1897. Other amendments worthy of notice prohibit the use of public money or credit for the aid of sectarian schools; divide cities into three classes, the first class being composed of those having 250,000 population or more, the second, of those having from 50,000 to 250,000, and the third, of all others; authorize the legislature to care for the improvement of the canals, without, however, borrowing money for the purpose unless the people expressly authorize it; make stockholders in banking corporations individually liable to the amount of their



THE BATTERY.

stock; perpetually prohibit the sale or leasing of public lands in the forest preserve or the cutting of timber thereon; and provide for a naval as well as a land force of militia.

The long protracted controversy about the "proposed civil code" was brought to an end—so far, at least, as its constitutional bearings were concerned—by eliminating that section of the constitution of 1846 which related to the codification of the laws. No allusion whatever is made to the code question in the new constitution. The status of the law of the state is thus defined:

Such parts of the common law, and of the acts of the legislature of the Colony of New York, as together did form the law of the said colony on the 19th day of April, 1775, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the 20th day of April, 1777, which have not since expired or been repealed or altered; and such acts of the legislature of this state as are now in force shall be and continue the law of this state, subject



to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts or parts thereof as are repugnant to this constitution, are hereby abrogated.<sup>1</sup>

The constitution was submitted to the people for their adoption or rejection on November 6, 1894. The apportionment and canal-improvement amendments were, however, referred as separate propositions. The popular vote resulted as follows: For the main body of the constitution, 410,669, against, 327,402; for the legislative apportionment amendment, 404,335, against, 350,625; for the canal-improvement amendment, 442,998, against, 327,645.

<sup>1</sup> Art. I., sec. 16.

## LEGAL EDUCATION IN NEW YORK.



HE history of legal education in the state of New York exhibits peculiar and interesting conditions of growth and development. "Until recently," said a well-known writer (in 1878), "instruction in the law in the United States has been given for the most part in the offices of practicing lawyers." The Hon. David J. Brewer, of the United States Supreme Court, noted in a paper read before the American Bar Association in 1895 that "it was many years after the settlement of the colony (of Massachusetts) before anything like a distinct class of attorneys-at-law was known. And," he continued, quoting from Washburn's "Judicial History of Massachusetts," "it is doubtful if there were any *regularly educated attorneys* who practiced in the courts of the colony during its existence."



CROWN ON COLUMBIA COLLEGE.

In a very early history of New York, written in 1756, the author, William Smith, afterwards chief-justice of Lower Canada, calls attention to the fact that the door of admission into practice of the Supreme Court of the State of New York is too open, and he says "the usual preparations are a college or university education, and three years' apprenticeship; or, without the former, seven years' service under an attorney. In either of these cases the chief-justice [who, by the way, it may be stated, was at that time James De Lancey] recommends the candidate to the Governour, who thereupon grants a license to practice under his hand and seal at arms. This being produced to the court, the usual State oaths and subscriptions are taken together with an oath for his upright demeanor, and he is then qualified to practice in every Court of the Province. Into the County Courts, attornies are introduced with still less ceremony, for our Governours have formerly licensed all persons how indifferently so-ever recommended, and the profession has been shamefully disgraced by the admission of men not only of the meanest abilities, but of the lowest employments."

Thus early do we find recorded, and much earlier doubtless there existed, a dissatisfaction in regard to the preparation of members of the bar for the work they were to engage in.

There is no reason to believe that prior to the Revolution any particular scheme of legal education existed in the Colony of New York.

Chief-Justice Sharswood, in his prefatory memoir of Blackstone, remarks (1859): "It may be enough to say that the whole body of American lawyers and advocates, with very few exceptions, since the Revolution have drawn their first lessons in jurisprudence from the pages of Blackstone's Commentaries."

It is certain that no system similar to the Inns of Court, with either its good or bad features, existed on this side of the Atlantic. The fact is that while in sporadic cases a clerkship with a judge or practicing attorney really brought with it direction as to the line of study, and help in applying knowledge thus acquired, the rule was that a man's development depended on himself. The personal equation was everything. As Lord Campbell once remarked, "He who is not a good lawyer before he comes to the bar will never be a good one after it." Thus our early generation of lawyers were men who had to grapple for themselves with principles of law, and with the cases in which those principles had been applied.

While this system was lax and bad, and bore its legitimate fruit, nevertheless strong men and great lawyers were not lacking under the old régime. Nor was the bar as a whole weak; its equal was not probably to be found in the country. But weak men and bad men could get in—that was the unfortunate feature; in fact, they could not easily be kept out, so few were the safeguards.



COLUMBIA COLLEGE IN 1758.

The roster of the early bar of New York was small, but contained some great names.

Thus, Valentine in his "History of the City of New York" (published in 1853) gives a very interesting list of attorneys who practiced in New York City between 1695 and the Revolutionary War. They hardly exceed a score in all. Among them we note

In 1697, David Jamison, "Gentleman."

In 1698, James Emott, "Gent. and Atty. at Law."

In 1702, John Bridges LL.D. "in suit of Gov. Cornbury."

In 1748, William Livingston, afterward Governor of the State of New Jersey, and together with the historian William Smith, above quoted, joint editors of the Colonial Statutes (Edition of 1752).

In 1768, Benjamin Kissam.

In 1769, Richard Harrison; of whom Chancellor Kent remarked that he was a "scholar of the first order, and after the age of 70, he was studying the more obscure and minor Greek poets with the ardor of youth."

Philip Livingston, Jr.

Thomas Jones.

Philip J. Livingston.

John William Smith.

John D. Crimshire.

David Matthews.

Samuel Jones; the recorder of the City and "patriarch of the profession."

A sharp contrast, this list, to what Mr. David Dudley Field, in a public address delivered some ten years ago, called attention to, to-wit, that in the State of New York alone there were then over 11,000 lawyers!

The venerable Benjamin D. Silliman, whose address at the memorable dinner given him by the New York City bar, May 24, on the sixtieth anniversary of his admission as an attorney, is reproduced in this volume, made the following interesting statement on that occasion:



COLUMBIA COLLEGE IN 1897.

It was easier to become a thoroughly learned lawyer in those earlier days than it is now. There was then less of law to be learned, and there was more of time in which to learn it. The world was not in such a hurry then. Kent and Hamilton and Spencer and Burr and Harrison and Wells and Emmett and Hoffman and Jones, and their cotemporaries, had few books to study. Their libraries could almost stand on their mantels. They drew their knowledge from Plowden, Coke, Lyttleton, the Year Books, Grotius, Puffendorf, Vattel, Emerigon, as well as Blackstone, the fountains of the law. . . . When Chancellor Kent was admitted to the bar in 1785 there was not a solitary volume of reports of any court in this country.

In 1867 the same distinguished lawyer addressed the graduating class of the Law School of Columbia College, and thus described the educational facilities of the earlier days:

Widely different have been, with few exceptions, the opportunities of legal instruction in this country until within a comparatively recent period. The student was required to enter the office of a practicing attorney, and there to pursue his

studies. He was at once engaged in the practice of that of which he had not learned the principles. He became familiar, by daily observation and as a copyist, with the forms of conveyancing and the phraseology of pleadings, without understanding their reason. The proper order of his instruction was inverted. Blackstone's Commentaries and, at a later period, Kent's (and sometimes other elementary works) were placed in his hands for perusal in the intervals of office business; but there was perceptible to him little relation between their contents and the daily routine of his clerical duties. As a general rule, it was impossible for the attorney in whose office the student was engaged to give any material attention to his studies, and his progress and attainments, therefore, lacked system, and were slow, confused, and uncertain. A formal and superficial examination at length passed him to the bar, and he could rarely feel at home in his profession until he had acquired, by subsequent laborious and anxious practice, a knowledge of very much that he should have attained at the outset. He was thus obliged, at great disadvantage, to lay a large part of the foundation of his house after he had toiled long upon the superstructure.

And in 1854 John Anthon wrote that the "fancied facility of becoming a lawyer, which has its origin in our *unfortunate constitution*, fostered by an almost indiscriminate admission derived from the same source, has crowded our courts of justice with uninstructed advocates who have been thus cruelly deceived into positions painfully demonstrating the poverty of their resources."

The clause in the constitution to which the learned writer referred is article vi., section 8, of the constitution of 1846, providing that "any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, is entitled to admission to practice in all the courts of this state."

To show the force of Mr. Anthon's criticism just noted, a brief review of the successive regulations adopted by the Supreme Court of New York in regard to the admission of persons to practice before the courts of the state will be in order.

At the October Term of the court in 1797 the court prescribed certain qualifications and requirements for admission, and first was a seven-years' clerkship with a practicing attorney. But it was provided that if after the applicant had attained the age of fourteen he should have pursued "classical studies" for four years or less, such time actually occupied could be deducted from the seven-years' clerkship. But any such deduction had to be certified and allowed by a justice of the court after inquiry into the facts and the entry of an order in the premises reciting the circumstances and specifying the time to be allowed. These rules further recognized a distinction between attorneys and counsellors at law by providing that after four-years' practice as an attorney one should be entitled, of course, to practice as counsel. Rule III. emphasized this by providing that "No person who shall be admitted to practice as counsel shall thereafter practice also as an attorney." This distinction was not long after done away with.

At the November Term in 1803 it was ordered "That every person who shall have regularly pursued juridical studies under the direction



or instruction of a professor or counsellor at law within this state for four years, or shall have been admitted to the degree of counsellor at law in any other of the United States (and practiced as such for four years in that state) shall be admitted as counsel in this state," thus annulling the rule theretofore obtaining. In the following year, at the November Term, Rule III. of 1797 was amended by allowing attorneys-at-law to become counsel, of course, after three years' practice instead of four.

At the August Term, 1806, the court adopted a rule admitting only such as should be natural-born or naturalized citizens of the United States.

Passing over minor modifications we come to the rules adopted at the October Term in 1829, to take effect January 1, 1830, which provided that no one should practice except after a regular admission and license by the Supreme Court. The seven-years' clerkship was retained, as well as the allowance of four years or less for time actually occupied in the pursuit of classical studies, if evidenced in an order of a judge of the court after inquiry. The certificate of the attorney with whom the clerkship was served was required to be filed, and from its filing the time of clerkship dated. After three years' practice as an attorney a lawyer might be admitted as counsel, not, as formerly, "of course," but "if he be found to be duly qualified." The citizenship requirement was also continued. In 1837, some difficulties having been occasioned by varying rulings as to what was proof of a pursuit of classical studies sufficient under the rule, the court provided at length what should constitute such proof, and the rules contained for the first time a most interesting provision, to-wit, that "*Any portion of time not exceeding two years spent in regular attendance upon the law lectures in the University of New York*" should be allowed in lieu of an equal portion of clerkship.

This is the first official recognition of the function of the law school as an element in juridical studies, and affords a fitting opening for a digression by way of inquiry into the history of the law schools of the state. Two years before this Mr. Benjamin Butler, attorney-general of the United States, had, at the request of the council of the New York University, submitted to Chancellor Mathews a "Plan for the organization of a law faculty in the University of the City of New York," in which he stated for the information of those "who may be unacquainted with the present state of legal education in New York," that at that time no other facilities for acquiring a legal education existed than those afforded by clerkships in the offices of the practicing attorneys and solicitors. He continued in the following summary :

In the year 1793 Chancellor Kent, then at the bar of this city, was appointed professor of law in Columbia College, and subsequently delivered law lectures to students in that institution. His appointment in 1798 to the bench of the Supreme Court of this state, and his subsequent removal to the seat of government, with-

drew him from the professorship and for a long season employed him in other duties.

On the expiration of his office as chancellor of the state in 1823 he returned to this city, resumed his station as professor in the college, and in the course of three or four years delivered to a class of law students the lectures since published by him in his invaluable "Commentaries on American Law." His labors as professor have for several years been discontinued, and, it is understood, are not to be resumed. There has never been any public law school in this state, except that connected with Columbia College during the continuance of Chancellor Kent's lectures. In a few instances, gentlemen of the bar who had retired from the active labors of the profession have devoted themselves to the instruction of small classes of law students.



NEW YORK POST-OFFICE, 1892.

The most distinguished, and probably the most useful of these private institutions, was that of the late Peter Van Schaak, of Kinderhook. This eminent lawyer died in 1832 at the advanced age of eighty-four, and I am not aware that there is now any private law school in the state.

Courses of lectures on particular branches of the law have also been occasionally given in the City of New York by members of the bar specially selected for the purpose by voluntary associations.

*Instruction in law offices is necessarily quite imperfect.* A course of reading is usually marked out for the student, and if he be industrious and attentive, he will have opportunities to acquire considerable knowledge of the practice. But as gentlemen engaged in extensive business can seldom find time to pay much attention

to the improvement of their clerks, the progress of the latter in the principles of legal science is usually tardy and laborious. In many cases they are left to grope their way in the dark, with little or no assistance from the principals. And even where this disadvantage is not experienced, the means of instruction in a law office will yet be found too limited to meet the wants of the student. The consequence is *that many of our attorneys and solicitors when licensed are very ill-qualified for the duties of their profession*; and though they may afterward, by proper exertions, acquire sufficient to guide them in the performance of their duties, much of this knowledge will have been gained by slow degrees, and sometimes, it may be feared, at the expense of their clients.

By the courtesy of Mr. William Allen Butler the writer is enabled to quote from the minutes of the council of the university the following extract of a resolution made after the plan prepared by his distinguished father had been submitted to the university:

At a meeting of the council held June 2, 1835, at the historic building in Washington Square, it was

*Resolved*, That this council do fully approve of the plan now submitted by the Honorable Benjamin F. Butler for the organization of the law faculty, and that the same be, and hereby is, adopted by this council, subject to such modifications as may hereafter be deemed advisable.

Subsequently he was elected unanimously principal professor, and entered upon the duties of his position in March, 1838, the primary and junior departments of the proposed law school having been preliminarily organized. The faculty consisted of three:

Benjamin F. Butler, professor of general law and the law of real property, and principal of the faculty;

William Kent, professor of the law of persons and of personal property;

David Graham, Jr., professor of the law of pleading and practice.

Shortly after the inauguration of this distinguished faculty, whose addresses were published in pamphlet form, and are most interesting and instructive, the university became financially embarrassed. Doctor Mathews was succeeded as chancellor by Honorable Theodore Frelinghuysen. The law school seemed to be in advance of the requirements of the time. It could not be carried on upon its originally projected scale. But it remained alive, attracting some students, developing under the superintendence of the learned and cultivated John Morton Pomeroy and the great jurist, Henry E. Davies; occupying a high plane of practical helpfulness under David R. Jacques, LL.D., such that the Honorable Noah Davis, after a long service as presiding justice of the Supreme Court in the 1st department, remarked to the writer in 1888 that its graduates came to the general term examinations better equipped in the practical law than any others; reaching its highest success under the late lamented Austin Abbott, the foremost legal educator of the century (by whom it was expected this article should have been written, and whose system of instruction the writer has described in a recent issue of the *American University Magazine*).

However, as will have been seen from the extract above set forth, this law school did not pretend to be the first, although it was the first whose scheme of instruction was approved in the rules of the court.



BARTHOLDI'S "STATUE OF LIBERTY."

For example, the Litchfield Law School in Connecticut had been established in 1784 and lived about fifty years, and under Mr. Reeve and Judge Gould had trained many of the New England bar. And Harvard College had established a law school in 1817; and Joseph

Story, writing in the *North American Review* in 1817, reviewing a "Course of Legal Study," which had been suggested by Professor Hoffman of the University of Maryland, emphasized "the importance, nay the necessity, of the law school which the governors of Harvard College had so honorably to themselves established at Cambridge," and, he continued, "no work can sooner dissipate the common delusion that the law may be thoroughly acquired in the immethodical, interrupted and desultory studies of the office and practicing counsellor." Such a situation he, however, acknowledges is indispensable after the student shall have laid the foundation in elementary principles under the guidance of a learned and discreet lecturer. It was this law school which the scholarly Simon Greenleaf in 1842 referred to in dedicating his "Treatise on Evidence" to Joseph Story himself as "the crowning benefit which, through your instrumentality, has been conferred on our profession and country."

The law school of Columbia College was more significantly a "school of law," perhaps, than any other in this state. Deriving its first prominence from the devoted labors of James Kent, it acquired its highest reputation after its regeneration in 1858 under Theodore W. Dwight, who came from Hamilton Law School, and whose well and widely known personal influences were such as to enable him in a peculiar measure to impart to others that which he himself knew so well.

His system, named by his name, is a common-sense method of instructing the student in the science he is investigating and of adding enthusiasm to ambition for knowledge. He has himself most interestingly described his own work, and justified his methods in an article written for the *Green Bag* in April, 1889, to which little can be added.

About the same time that Mr. Butler prepared the "plan" for a law school above referred to, Mr. John C. Spencer (who was associated with Mr. Butler and Mr. Duer in the revision of the statutes of the state) prepared a plan for a law school at Hamilton College, from which school, as has been noted, Doctor Dwight was later on called to Columbia.

In 1851 the Albany Law School was organized as a component part of the "University of Albany," created by special act of the legislature in that year. In 1873 this institution united with Union University, and the law school is now a department of the latter.

Mr. Irving Browne, who has predicted, most characteristically, that "if Macaulay's New Zealander shall ever take his seat on a broken arch of the Hudson River railroad bridge to sketch the ruins of the capitol, the Albany Law School will still be in full vigor and prosperity," takes no account of the facts above recited when he records that the only competitors of the Albany Law School when it was founded were Harvard and Yale.



It was not until May 30, 1845, that the Supreme Court of this state amended the rules for admission of attorneys so as to allow *one year*, on account of the clerkship to be served, for time spent in regular attendance upon the law lectures, not only of the New York University, but also of "Cambridge University or the law school connected with Yale College."

But Mr. Browne is right in pointing out that subsequently to the constitution of 1846 it was enacted that the diploma of the Albany Law School should entitle the holder to admission to practice without any examination at bar. No wonder John Anthon made the lament above quoted when the historiographer of this school himself characterizes this as "loose."

This school has a glittering roll of names in its faculty register, from Chancellor Walworth, its first president, including Ira Harris, Amos Dean, Amasa J. Parker, and Judge William F. Allen, down to George W. Kirchway, William A. Learned, Matthew Hale, Judson S. Landon, Charles T. F. Spoor, Hiram E. Sickels, Irving Browne, Nathaniel C. Moak and James W. Eaton, Jr., its present faculty.

The Buffalo Law School, founded in 1887, and the New York Law School, founded on the resignation of Professor Dwight from Columbia in 1891, are still in their minority, but each has made a place for itself. So also the Metropolis Law School, which initiated the practice of evening sessions, which attained a well-deserved popularity, but is now merged in the New York University Law School as its evening department, and the former head of which, Clarence D. Ashley, has recently been elected to succeed the lamented Austin Abbott as dean of the joint schools.

The law school of Cornell University is the last one of the New York State law schools to which we can refer.

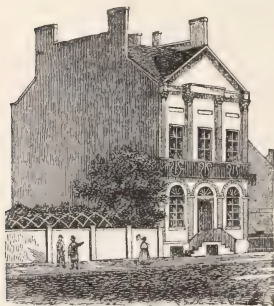
The original faculty of the school, which opened in the autumn of 1887, had for its dean the Honorable Douglas Boardman, formerly a partner of Judge Finch, now of the Court of Appeals, and himself until 1887 a justice of the Supreme Court. With him were associated, as professors, Harry B. Hutchins, Charles A. Collin, Francis M. Burdick, Moses Coit Tyler, and Herbert Tuttle; while as non-resident lecturers were secured the Honorable Francis M. Finch, Honorable Daniel Chamberlain, Honorable William F. Cogswell, and the Honorable Theodore Bacon. This school has avoided committing itself to any distinctive method of instruction, unless, as has been said, "instruction of the more advanced students by means of the study of specially selected cases be enough to constitute a special system." It has a well-defined position and a high reputation due to the character not only of its instructors but of its graduates as well.

But while the reference in the rules of 1837 to the law school of the University of New York started us upon this digression, enough has been detailed to serve the purposes of this article, if we add by

way of summary the suggestion that by reason of competitive and other stimulative influences, and under the wise counsel of deliberative bar associations, the law schools of this state are advancing to a more perfect system and method of instruction. The lawyer of the twentieth century will be without excuse if he be not trained beforehand for the efficient performance of his professional duties.

As the associate dean of the Cornell Law School said in January, 1894, before the State Bar Association, this state is now far in advance of most of her sister states in the matter of requirements for admission to practice.

The functions of the section of legal education of the American Bar Association would form a most tempting field for another digression. But the writer must content himself, considering the limitations placed upon this article, with referring to the annual reports of that great association. It serves, as do also the various state bar associations, as a great educational factor along the lines of "forensic duties" and "professional ethics," two subjects much emphasized in Mr. Butler's "plan," and is therefore not to be ignored in a sketch of the growth of legal education.



NEW YORK SOCIETY LIBRARY, 1795.

those applying for examination. The rules were made stricter in view of certain abuses which had crept in and to which attention was called in said report. All applicants were to be examined in open court before the general term on specified days, "and at no other time or place," and no private examinations were to be permitted.

Then, also, for the first time, the subjects upon which satisfactory examination should be had were specified. This is notable as marking a great step forward in legal education and in raising the standard of professional attainments. The subjects required were: Law of Real and Personal Property, Contracts, Partnerships, Negotiable Paper, Principal and Agent, Principal and Surety, Insurance, Executors and Administrators, Bailments, Corporations, Personal Rights, Domestic Relations, Wills, Equity Jurisprudence, Pleadings, Practice, and Evidence.

With the more recent requirements the reader is familiar and has

ready access to the books containing them. For example, the great change in 1871, when the whole matter of admission to the bar was placed under the control of the Court of Appeals, and the more recent and perhaps more important change of 1895, providing for uniform examinations in all the various judicial departments.

It would be interesting could the writer include in this sketch the anecdotes illustrative of the lax methods of examination and education for the bar of this state which have been narrated to him by veteran members of that bar whose memories go back to the constitution of 1846 and earlier. But that would perhaps be out of place. So also the limits set to such an article as this preclude any inquiry into the early history of legal education; otherwise we could review with great profit the principles recognized by the old Roman jurists in the inculcation of those fundamental rules of conduct that have shaped civilization and so vitally affected the relations of mankind. We could touch upon the privileges the young law student ("auditor") enjoyed in the days when it was held a great honor to teach the civil law, and when, as Cicero said, "The houses of the most eminent citizens were thronged with disciples." We could enlarge upon the views Justinian entertained as to the necessity of elementary ground-work before attempting to master practical law. Comment would not be uninteresting upon the claim that the awakening of interest in legal study in the eleventh and twelfth centuries preceded rather than succeeded the improvement in the law itself—a reasonable and demonstrable assertion, surely. A treatise could be, and has been, written upon the *glossa* and the glossators, and the helpful light thrown on some still surviving errors in method, illustrated by the experience of these faithful specialists.

But all this has been exhaustively done by others. It is clear that for the purpose of this brief résumé we are concerned only with such local conditions and developments as have been already briefly summarized.

The writer closes by calling attention to the fact emphasized by John Norton Pomeroy, that if the necessity for a liberal education in the principles of the law was great in the case of the educated youth of England, as Sir William Blackstone insisted, much greater is it in this country because of our methods and forms of government. Where a legislature can by its enactment change the whole method of procedure of a state, it is surely important that those who may be elected to serve in that body be familiar with the fundamental principles of the law. For as Chancellor Kent once observed in addressing "The



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Law Association" in New York (October 21, 1836), "Legal learning is, in a very considerable degree, indispensable to all persons who are invited to administer any material portion of the authority of government, and especially if it becomes the province of their trust to make, amend, and digest the law of the land, or judicially to expound and apply its provisions to individual cases in the regular course of justice." Therefore we welcome the fact that not only by our law schools, but in our universities, colleges, and even our academies, social and municipal law is generally diffused and men grow up into familiarity with the principles of the constitution under which they live, and learn, by varying experiences, respect and fear for the law by which they govern and are governed.

## THE ASSOCIATION OF THE BAR.



IN the later colonial chronicles of New York there are few things more interesting and significant than the organized, persevering and successful opposition interposed by the legal profession to the increasing encroachments of the British crown. As early as 1744 the lawyers of New York entered into an association to free the judiciary from the exercise of the king's prerogative. Mr. H. B. Dawson, in his tract on the Sons of Liberty, traces the inception of that society in New York to the formation of this primitive "bar association." None of the records of the association (so-called) have come down to us; and, indeed, it probably never presented a public character as a formally officered body, but operated quite spontaneously, the bar as a whole readily following the leadership of a few active spirits. When, in 1763, the royal lieutenant-governor, Cadwallader Colden, undertook to enforce his novel dogma that the governor and council were entitled to review upon appeal the findings of a jury concerning questions of fact, the bar of New York was unanimous in resistance to this arbitrary proceeding, and it is an exceedingly impressive fact that the lieutenant-governor was unable to find a single lawyer willing to argue his unjust cause when it came to be judicially tested. This unpleasant experience led him, in his correspondence with the home government, to assail the "association" of the provincial bar with much severity. He bitterly complained that the association set up by the profession of the law in New York was exercising a most "dangerous influence," which tended uniformly toward "inlarging the powers of the popular side of government" and "depreciating the powers of the crown"; and he suggested energetic measures for putting an end to the "Dominion of the Lawyers."<sup>1</sup>

This early combination of legal practitioners in New York bears, of course, no ancestral relation to the great Association of the Bar of to-day; but it is interesting to recall that a century and a half ago the New York bar assumed, in a united way, public functions very similar to those which have characterized the transactions of the existing association from the outset of its career.

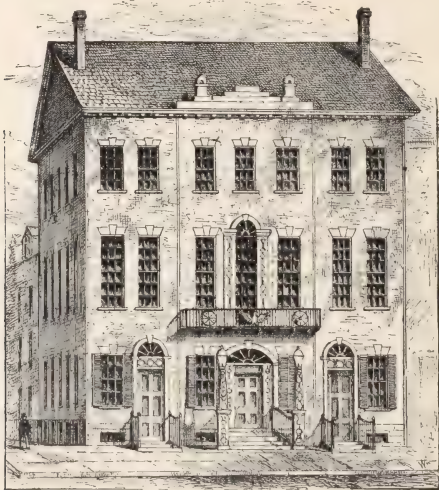
The commanding position held by the bar in colonial times was preserved for more than half a century after the Revolution. Throughout all that period the power and dignity of the legal profession were too well recognized to need special assertion of any kind. The bar in those days was a public and social establishment of the most eminent

<sup>1</sup> See pp. 64, 90, of this volume.



order, because, as an entity, it stood, in universal estimation, at an elevation well corresponding to the attainments and virtues of the great men who adorned it.

The adoption of the constitution of 1846 marked a new era for the bar. The ancient distinctions between attorney, solicitor, and counsellor were abolished, and all lawyers, from the humblest to the most renowned, were placed on the same nominal footing. The qualifications for admission to the bar were made less exacting, thus rendering it not difficult for anyone to enter the ranks of the profession, and finally sweeping alterations were made in the judiciary system, whereby elective judges were substituted for appointive. Moreover, a new system of procedure shortly came into vogue, largely increasing the



OLD TAMMANY HALL—NOW OFFICE OF THE NEW YORK "SUN."

discretionary powers of the judges, and bestowing upon them an immense patronage in the appointment of receivers and referees and in the granting of commissions and allowances. The spirit of the times contributed also, in a potent manner, to the changed conditions of the legal profession. The vast expansion of wealth and population, the growth of great corporations, the widespread demoralization attending the civil war, the development of the speculative spirit, and the steady degeneration of political and official morality in the city and the legislature were not without effect upon the legal profession.

In truth, during the years following the war—the culminating

period of misrule and political corruption in the city of New York—there was a strong popular disposition to hold the bar in no small measure responsible for the prevailing scandals and evils. It was openly remarked “that its glory and dignity were gone, that it had ceased to be a noble profession and had become merely a trade with the rest.”<sup>1</sup> The gravest suspicions were entertained against the integrity of the judiciary, and it was widely believed that the administration of justice was disgraced by monstrous improprieties, yet for a long time there were no signs of any movement on the part of the bar in behalf of reforms.<sup>2</sup> In 1869 the *New York Times*, which had already begun its crusade against the “ring,” vigorously criticised the bar for its apparent indifference, and urged it to take steps for its own vindication and for the purification of the bench. “If it be the supineness, the guilty silence of the lawyers, as officers of the people’s courts, which have brought us to our present pass,” said the *Times*, “it is their reawakened public spirit and activity which must help us back to a better state things. . . . We must again proclaim that the bar must lead the way.”<sup>3</sup>

The necessity set forth in these *Times* articles had, however, been anticipated by a number of the leading members of the profession, who had conferred together at intervals during the year, and taken the preliminary steps toward organizing a bar association. The following pledge had been circulated for signatures:

The undersigned, Members of the Bar of the City of New York, believing that the organized action and influence of the Legal Profession, properly exerted, would lead to the creation of more intimate relations between its members than now exist, and would, at the same time, sustain the profession in its proper position in the community, and thereby enable it, in many ways, to promote the interests of the public, do hereby mutually agree to unite in forming an Association for such purposes.<sup>4</sup>

<sup>1</sup> See the address to the members of the bar of the city of New York, Bar Association report, 1870.

<sup>2</sup> The reader will, of course, understand that the severe public criticisms of the bench and bar at that period were provoked by exceptional manifestations and events, for which only a portion of the profession and the judiciary were blameworthy. This unworthy element was in no manner representative of the distinguishing spirit and character of the bench and bar of New York. The organization of the Association of the Bar, in which so many reputable lawyers promptly joined, was in itself a complete vindication of the profession as a whole; and as for the judiciary, the majority of its members were entirely above suspicion, even in those times.

<sup>3</sup> *New York Times*, December 16, 1869.

<sup>4</sup> The following is a complete list of the original signers:

Wm. M. Everts.  
\*Henry Nicoll.  
William Allen Butler.  
\*John K. Porter.  
\*A. J. Vanderpoel.  
\*C. Van Santvoord.  
\*Thos. C. T. Buckley.  
D. B. Eaton.

\*A. Underhill.  
\*D. D. Lord.  
\*F. N. Bangs.  
\*Henry H. Anderson.  
\*Edwards Pierrepont.  
\*E. H. Owen.  
H. M. Alexander.  
Ashbel Green.

Wm. M. Pritchard.  
Wm. G. Choate.  
Richard S. Emmet.  
\*Clarkson N. Potter.  
\*Thos. H. Rodman.  
\*B. F. Dunning.  
\*John J. Townsend.  
Sidney Webster.  
C. A. Seward.  
\*Charles M. Da Costa.  
\*Aug. F. Smith.  
Luther R. Marsh.  
Joseph H. Choate.  
Chs. F. Southmayd.  
\*Waldo Hutchins.  
\*Lucien Birdseye.  
\*Charles P. Crosby.  
\*Benjamin K. Phelps.  
Abm. R. Lawrence, Jr.  
Charles Couderd, Jr.  
\*L. L. Couderd.  
John Erving.  
\*John H. Platt.  
\*S. J. Tilden.  
H. M. Ruggles.

Everett P. Wheeler.  
\*Charles A. Rapallo.  
\*Charles P. Kirkland.  
W. W. Macfarland.  
Charles A. Davison.  
F. R. Coudert.  
\*Charles Jones.  
\*C. J. De Witt.  
J. Frederick Kernochan.  
\*J. W. Edmonds.  
William Hildreth Field.  
\*Charles H. Glover.  
Buchanan Winthrop.  
\*Frank E. Kernochan.  
Ellis F. Hall.  
\*John M. Knox.  
Herbert B. Turner.  
\*Charles P. Kirkland, Jr.  
\*John McKeon.  
Charles E. Butler.  
S. P. Nash.  
\*Samuel E. Lyon.  
\*Alexander Hamilton, Jr.  
\*David Dudley Field.  
\*E. W. Stoughton.

At the close of December, 1869, 231 signatures having been obtained, Messrs. James C. Carter, Albert Mathews, and Edmund Randolph Robinson were appointed a committee to call a meeting for the purpose of organization.

This truly historic meeting was held on the evening of the 1st of February, 1870. Edgar S. Van Winkle presided. Nearly every one of the subscribers was in attendance. Although there was nothing in the pledge to indicate that the signers had in contemplation any particularly grave considerations of public or professional duty or interest, all the speakers manifested the utmost seriousness in their remarks.<sup>1</sup> The addresses recognized the solemn obligation resting upon the bar to elevate the professional standards, and to correct abuses and extirpate infamies in the administration of justice. "It is not to be concealed," said Judge James Emott, "that there is a deep undertone of feeling among the lawyers who have signed this call, and who make up this

\*James Emott.  
Benj. D. Silliman.  
\*John Slosson.  
Charles A. Peabody.  
\*E. Louis Lowe.  
\*George N. Titus.  
\*John P. Crosby.  
\*Albon P. Man.  
John E. Parsons.  
\*E. C. Benedict.  
\*J. S. Bosworth.  
\*Edgar S. Van Winkle.  
\*G. M. Speir.  
\*Henry A. Cram.  
\*F. F. Marbury.  
\*Wm. E. Curtis.  
\*Murray Hoffman.  
\*Hamilton W. Robinson.  
\*J. E. Burrill.  
J. W. Gerard, Jr.  
\*Alvin C. Bradley.  
\*George T. Strong.  
\*William Betts.  
J. W. Ostrander.  
\*W. A. Ogden Hegeman.  
William Barrett.  
\*David Thurston.  
William Henry Arnoux.  
Charles C. Jones, Jr.  
Franklin A. Wilcox.  
Theodore M. Davis.  
Charles D. Ingersoll.  
\*Edm'd Randolph Robinson.  
\*Henry R. Winthrop.  
Henry Hilton.  
\*John S. Jenness.  
\*M. Van Buren Wilcoxson.  
E. L. Fancher.  
\*Charles F. Sanford.  
John Whipple.  
\*F. S. Stallknecht.  
\*Grosvenor P. Lowrey.  
Andrew Stewart.

\*Edward Holland Nicoll.  
Frederick Smyth.  
\*Lyman W. Bates.  
\*James S. Huggins.  
John Berry.  
\*F. J. Fithian.  
Edward Patterson.  
E. Ellery Anderson.  
\*Jos. B. Lawrence.  
Charles E. Strong.  
A. P. Whitehead.  
\*T. R. Strong.  
Wm. J. Hoppin.  
\*Lewis L. Delafield.  
\*Charles F. Blake.  
\*Livingston K. Miller.  
Wm. S. Opdyke.  
John E. Ward.  
Charles B. Stoughton.  
Albert Mathews.  
Flamen B. Candler.  
\*Philo T. Ruggles.  
\*B. Roelker.  
\*William Tracy.  
Ch. Francis Stone.  
George W. Soren.  
George M. Miller.  
Wheeler H. Peckham.  
\*Theodore W. Dwight.  
\*Oscar Smedberg.  
\*Henry J. Scudder.  
\*Townsend Scudder.  
James P. Lowrey.  
Henry D. Sedgwick.  
\*Richard H. Bowne.  
\*Smith Clift.  
Charles D. Burrill.  
George C. Barrett.  
Henry R. Beckman.  
\*Charles B. Moore.  
Noah Davis.  
Julien T. Davies.  
Gerard Beckman.  
Eugene H. Pomeroy.

\*Hamilton Morton.  
\*Thomas C. Ingersoll.  
Richard H. Clarke.  
\*Frederick Kapp.  
Edmund Wetmore.  
C. A. Hand.  
\*F. H. Churchill.  
\*Henry E. Davies.  
\*R. M. Harrison.  
Robert Sewell.  
E. G. Drake, Jr.  
Henry B. Hammond.  
\*W. Q. Morton.  
\*Henry Whittaker.  
\*Thomas M. Wheeler.  
Charles E. Whitehead.  
\*John N. Whiting.  
\*G. M. Ogden.  
\*Robert Benner.  
Elbridge T. Gerry.  
\*Charles Tracy.  
\*Charles Edward Tracy.  
J. Everts Tracy.  
\*George DeForest Lord.  
\*John C. Dimmick.  
J. S. Winter.  
\*Joshua M. Van Cott.  
\*George W. Parsons.  
\*Hiram Barney.  
\*John Sherwood.  
\*Walter L. Livingston.  
Albert Stickney.  
\*Henry A. Taiter.  
Alfred L. Edwards.  
Aug. R. Macdonough.  
W. W. Goodrich.  
\*S. Merrihew.  
D. C. Van Cott.  
Beverly Robinson.

William Jay.  
John A. Weeks.  
\*Hooper C. Van Vorst.  
\*George H. Forster.  
James F. Dwight.  
James C. Carter.  
Jos. Larocque.  
\*W. Stanley.  
\*Francis C. Barlow.  
\*Charles H. Hunt.  
John S. Davenport.  
\*John J. Latting.  
John L. Cadwalader.  
\*Edward H. Anderson.  
\*Charles Nettleton.  
\*John A. Foster.  
Smith E. Lane.  
Thomas E. Stillman.  
Thomas H. Hubbard.  
\*Morris S. Miller.  
\*John G. Vose.  
Dwight H. Olmstead.  
\*James I. Roosevelt.  
Frederick E. Mather.  
William Watson.  
John H. Risley.  
C. B. Wheeler.  
\*Edgar Ketchum.  
A. P. Ketchum.  
E. Ketchum, Jr.  
\*Fohn Fitch.  
\*Samuel G. Glassey.  
\*James R. Jessup.  
\*Joseph B. Varnum.  
\*P. W. Turney.  
\*Osborne E. Bright.  
Benj. T. Kissam.  
Henry P. Townsend.

\* Deceased.

<sup>1</sup> The speakers were: Henry Nicoll, Edwards Pierpont, James Emott, Samuel J. Tilden, and William M. Everts.

"WHO IS INCERSOLL'S CO?" NY TRIBUNE

*THE INCERSOLL TAKING ME TO INTRODUCE YOU TO HIS CO.*



TWO GREAT QUESTIONS.

*W. Nast.*



"WHO STOLE THE PEOPLE'S MONEY?" — DO TELL. NY TIMES.

'T WAS HIM.

TWEED CARTOONS BY THOMAS NAST, "HARPER'S WEEKLY," 1871.



significant meeting, upon certain subjects. There is an undertone in what has been said which it would require but little to bring into distinct utterance. We, as lawyers, feel deeply the complaints which are rife of abuses in the practice of the law and in the administration of the law." And the Honorable Samuel J. Tilden went even further, using these trenchant words:

As a class, as a portion of the community, I do not desire to see the bar combined, except for two objects. The one is to elevate itself; to elevate its own standards; the other is for the common and public good. For itself nothing; for that noble and generous and elevated profession of which it is the representative, everything.

It cannot be doubted—we can none of us shut our eyes to the fact—that there has been, in the last quarter of a century, a serious decline in the character, in the training, in the education, and in the morality of our bar, and the first work for this association to do is to elevate the profession to a higher and a better standard. If the bar is to become merely a method of making money, making it in the most convenient way possible, but making it at all hazards, then the bar is degraded. If the bar is to be merely an institution that seeks to win causes, and to win them by back-door access to the judiciary, then the bar is not only degraded but it is corrupt. . . .

The bar, if it is to continue to exist, if it would restore itself to the dignity and honor which it once possessed, must be bold in defense, and, if need be, bold in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows and to which it is devoted, the bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary, it can have the administration of justice made pure and honorable, and can restore both the judiciary and the bar until it shall be once more, as it formerly was, an honorable and an elevated calling.

It should not be supposed that the association had in view at the start any specific plans for the practical exercise of that boldness in aggression which Mr. Tilden counselled. The time had not yet arrived for the organized movement against the Tweed Ring. The formation of the Bar Association antedated by many months the damning disclosures which marked the beginning of the formal campaign; indeed, it was not until the middle of 1871—a year and a half after the first bar meeting—that the popular uprising came. Consequently the original objects of the association did not at all include schemes of immediate reform operations; such schemes, announced by a dignified association of lawyers, would have seemed precipitate in the as yet unawakened state of public opinion.<sup>1</sup> But it is none the less true that in the establishment of the Association of the Bar in February, 1870, the growing sentiment of the community first found distinct expression; and the Bar Association was truly one of the pioneers in the grand enterprise of the city's delivery. Moreover, the more clear-seeing of the founders of the association had a thorough understanding

<sup>1</sup> Mr. Henry Nicoll, the principal speaker at the bar meeting, deemed it unwise to provoke popular criticism of the association by any semblance of aggressive purpose. "I fancy," said he, "that there are not a few who will perhaps think that it (the association) is

formed in a spirit of hostility—that its object is attack. I hasten, for myself and every other gentleman associated with me, to deprecate any such idea, and to disavow any such intent."





*Samuel J. Tilden*



of the gravity of the situation with which that body would, logically, have sooner or later to deal. It was not merely the elevation of professional standards, it was the very salvation of the bench, that was to require most conscientious and determined endeavor. For the corrupt character of a portion of the judiciary was already very well



"WHAT ARE YOU LAUGHING AT? TO THE VICTOR BELONG THE SPOILS."

(Twiced cartoon, *Harper's Weekly*, after the election of 1871.)

known to the bar, and recent notorious doings had made the humiliating truth odiously conspicuous.

At a second meeting, February 15, 1870, the association was organized permanently under the name of the "Association of the Bar of the City of New York," a constitution and by-laws were

adopted, and officers were chosen, as follows: President, William M. Evarts; vice-presidents, Samuel J. Tilden, James W. Gerard, Joseph S. Bosworth, John Slosson, and Edgar S. Van Winkle; treasurer, Albon P. Man; corresponding secretary, John Bigelow. The objects of the association were thus defined in the constitution:

To maintain the honor and dignity of the profession of the law, to increase its usefulness in promoting the due administration of justice, and to cultivate social intercourse among its members.

The by-law governing admissions to membership was so drawn as to afford reasonable safeguards against the entrance of unworthy individuals. A committee on admissions was appointed, consisting of twenty members. Candidates against whom five negative votes were cast in the committee were not to be recommended to the association; and candidates recommended for admission were to be voted on by ballot in the association, one negative vote in every five being sufficient for exclusion.

The first public action of the association, taken two or three days after its formal organization, was not without significance. On the 13th of February the city was stirred by the news of the attempted assassination, the evening before, of Mr. Dorman B. Eaton. Mr. Eaton had made himself obnoxious to certain interests by the part he took in the Gould-Erie litigation and other matters more or less involving the same interests; and it was a natural inference that the attempt on his life was inspired by resentment. The Bar Association promptly met, adopted resolutions denouncing the outrage, and offered a reward of \$5,000 for the conviction of the offender. Although nothing came of this action, it was a timely manifestation of the earnest spirit which actuated the bar in its newly organized capacity.

The association was incorporated by an act of the legislature passed April 28, 1871. In the summer of that year the *Times* began its publication of the city accounts, demonstrating by official figures the complete truth of all the charges that had been made against Tweed and his associates; and in the November following the ring was overwhelmed at the polls.

The Bar Association now entered actively upon the work of investigating the city judiciary and ousting the corrupt judges from office. On November 14, seven days after the election, a special meeting was held, at which a committee<sup>1</sup> was appointed with instructions "to inquire into the truth of the charges that have gained credit in this community, reflecting upon the administration of justice in this city, and to ascertain whether the same have a just foundation in trustworthy evidence, . . . and to report whether it is expedient for this association to take any and what measures in the premises." The committee of inquiry unanimously reported to the association, January 4, 1872, that

<sup>1</sup> The members of this committee were: Wheeler H. Speir, William M. Prichard, James C. Carter, and Peckham, Noah Davis, John Slosson, Gilbert M. Joshua M. Van Cott.

it had ascertained the charges to be well founded, and that they were of such character as to call for investigation by the legislature and the removal from office, by the methods provided by law, of the guilty judges. The offenses established by the inquiry, continued the committee, consisted

In the gross abuse of the powers of such judges and the courts held by them, respectively, in the granting of injunctions, in the creating of receiverships and the appointment of receivers and transferring to them vast amounts of property, both of corporations and individuals; in abusing the power to appoint referees and in making excessive allowances to receivers, referees, and others for purposes not justified by law; in abusing their authority in the manner of holding courts; in making improper *ex parte* orders out of court, and in deciding causes and motions without a hearing in court; in abusing the writ of *habeas corpus*, by using or permitting its use for unlawful purposes, and in improperly withholding relief under the writ; in attempting the intimidation of counsel in the discharge of duty toward their clients, and in showing undue favoritism to other counsel and attorneys for their personal or professional advancement; in gross and indecorous conduct while sitting in court, tending to bring the office of judge into popular contempt; in various acts indicating the influence of corruption upon their official conduct and decisions; and finally in so perverting judicial authority by the use of devices under the forms of law as to enable individuals and corporate officers to usurp and exercise unlawful powers, seize and convert property, accomplish nefarious designs and evade justice.

This report was approved by the association and a memorial to the legislature was prepared, in which it was urged that a rigid inquiry be instituted, and "such remedies be applied as the results of that inquiry may demand." A committee of sixteen<sup>1</sup> was selected to present the memorial at Albany. Early in the next month (February, 1872), specific charges having been drawn against George G. Barnard and Albert Cardozo, justices of the Supreme Court, the judiciary committee of the assembly began the taking of testimony. Later, similar charges against John H. McCunn, justice of the Superior Court of the City of New York, were submitted and considered. The counsel for the Bar Association throughout the resulting proceedings were Joshua M. Van Cott, John E. Parsons, and Albert Stickney.

The issue of these memorable prosecutions of the three ring judges was a complete victory for the Bar Association. On May 2 Judge Cardozo resigned to avoid impeachment; July 2 Judge McCunn was removed from office by the unanimous vote of the senate; and August 19 Judge Barnard was adjudged guilty and removed by the senate and Court of Appeals sitting as a High Court of Impeachment, the decision in this case also being unanimous. Barnard, in addition to removal, was by a vote of 33 to 2 forever disqualified from again holding public office. The Bar Association and the public contributed in the aggregate nearly \$30,000 for the expenses of the prosecutions.

<sup>1</sup> Noah Davis, Joseph H. Choate, E. R. Lawrence, Jr., Charles H. Hunt, Morris L. Miller, John E. Parsons, John McKeon, Stephen P. Nash, Henry Nicoll, E. Ran-

dolph Robinson, Joshua M. Van Cott, Andrew Boardman, George M. Gilbert, Charles Tracy, Stewart L. Woodford, and William R. Martin.



Much the largest part of this amount was given by members of the association, but subscriptions were received also from banks, insurance and trust companies, and citizens who appreciated the importance of the undertaking for reforming the judiciary.

The work thus accomplished was in important respects the vital achievement of the whole reform movement. Considered in its strictly popular phases, the destruction of the Tweed Ring, as an organized band of plunderers, was certainly a splendid demonstration of the irresistible power of aroused public sentiment for the immediate correction of even the worst government; yet no one will assert that it definitely brought to an end the possibility of systematic misrule and corrupt rule in New York. The renovation of the ordinary public



WASHINGTON BUILDING.

PRODUCE EXCHANGE.

offices of New York effected by the people's uprising in 1871 of course had an enduring value of a certain kind; for it afforded both a stimulating example and a stern warning for all the future. But it is in the very nature of popular government that grave abuses in official administration will reappear from time to time notwithstanding occasional successful applications of the most radical correctives; and despite the great reformation of 1871 it is notorious that the standards of the city government of New York have frequently, in the years which have elapsed since then, been very remote from the ideal. On the other hand, the purification of the judiciary by the efforts of the Bar Association proved to be final, and at no time has this portion of the work of 1871-72 had to be done over again. It has never since been found needful to formulate indictments like those brought against Judges Barnard, Cardozo, and McCunn; and on only one occasion has the

association deemed it fitting to request legislative inquiry into the conduct of a judge of the city bench.<sup>1</sup>

The association has continued, however, to take vigilant and active interest in all matters affecting the efficiency and repute of the courts.

In the universal disgust excited by the revelations of the judiciary impeachment proceedings, a re-action set in against the entire system of elective judges. A constitutional amendment was submitted in 1873, providing for a return to the appointive method. This was earnestly favored by the Bar Association, and an able address to the people, signed by William M. Evarts, was issued. The amendment was, however, defeated at the polls;<sup>2</sup> and as party nominations for judicial offices have since then generally given no ground for complaint, the association has accepted the established order of things. No attempt has been made at its instance to reopen the question.

It has always been one of the leading features of the association's public attitude to exert a practical influence for the nomination and election of none but good and thoroughly qualified men for positions on the bench. In the anti-ring campaign of 1871, the Bar Association, at a numerously attended meeting, appointed a committee to confer with the different political organizations as to the judicial candidates to be nominated, and the same course was pursued in 1872. It came to be understood by the politicians that the Bar Association was thoroughly in earnest on this subject, and that every unworthy judicial candidate would have to encounter its uncompromising opposition. In 1881 the association thus defined its policy in reference to judicial nominations:

Any active participation in a canvass for judicial offices would be distasteful to us, but it has been necessary in the past, and it may be necessary in the future. If so we shall not shrink from it. We felt justified in taking an active part in the impeachment and removal of two judges. We cannot doubt that this association will think it within its province to take all steps necessary to insure the choice of suitable successors.

In conformity with this definition of policy, the following provision is made by the by-laws:

At each annual meeting there shall be appointed by the presiding officer a committee of ten, to be known as the committee on judicial nominations, whose duty it shall be to consider the fitness of candidates nominated or proposed to be

<sup>1</sup> Investigation of charges or complaints against judges has up to the present time never been undertaken by the Bar Association except in special public emergencies. But by a by-law adopted in December, 1896, the standing committee on grievances is authorized, on the submission to it of a complaint in writing, to investigate any grievance touching the administration of justice. The committee on grievances is to report its conclusions to the executive committee, and "if the said committee shall find the complaint, or any material part of it, to be of such a nature as to require action by the association, they shall so report to the association, with their recommendations as to the action to be taken

thereon, and they may also report the evidence taken or any part thereof."

<sup>2</sup> The amendment was submitted in the form of two questions: 1. "Shall the chief judge and associate judges of the Court of Appeals and the justices of the Supreme Court be hereafter elected or appointed?" 2. "Shall the judges of the Superior Courts of New York City and Brooklyn, of the Court of Common Pleas of Buffalo, and the several county judges throughout the state be hereafter elected or appointed?" The vote stood: for election of higher judges, 319,979, against, 115,337; for election of lower judges, 319,660, against, 110,725.

nominated by political parties or otherwise, for election or appointment to judicial office, and to confer on that subject with other organizations or with nominating conventions, and with power to recommend to the association, at a special meeting or otherwise, such action in respect to candidates as they may deem necessary or proper.

It is gratifying to note in the published reports of the Bar Association that the space set apart for "Annual Report of the Committee on Judicial Nominations" has for very many years contained only the single word "None."

But while the association's recent records show entire absence of cause for discontent with New York City judicial nominations, the action taken in a late state judiciary contest forms a conspicuous chapter in its history. The circumstances of the Maynard affair are still fresh in the recollection of the bar and the public; and it is not needful or desirable to allude to them in detail here. It is, of course, unnecessary to remark that the conduct of Mr. Maynard, as attorney-general of the state, in the matter of the Dutchess county returns—a matter involving extensive party interests—was, until the facts became fully known, a subject of somewhat divided opinion in an association of lawyers having varied party affiliations. When, however, Mr. Maynard was elevated to a vacant judgeship in the Court of Appeals by the governor's appointment, a strong opposition, on grounds of principle, was developed, and a course corresponding to the sentiment thus declared was adopted accordingly. A committee of nine<sup>1</sup> was appointed March 8, 1892, to investigate the questions at issue; and on March 22 the association, adopting the committee's recommendations, requested the senate and assembly "to consider whether the conduct of Judge Isaac H. Maynard does not demand an exercise of the power to remove judges vested by the Court of Appeals in the legislature." The association later, in the fall campaign of 1893, followed up this action by taking a prominent part in opposing Judge Maynard's election to the position in the Court of Appeals for which he had been nominated by his party.

One of the prime objects of the association's existence, as stated in the constitution, is "to maintain the honor and dignity of the profession of the law." In promotion of this aim, it has, from the beginning, been very attentive to all matters concerning the standards of the profession. Special consideration has been given by it at various times to the important subject of the regulations for admissions to the bar; and although much of the credit for recent improvements in this respect is due to the State Bar Association, the original steps were taken by the New York City association. For example, the essential feature of the present regulations, vesting the whole responsibility for admissions in a State Board of Law Examiners appointed by the Court

<sup>1</sup> Frederic R. Coudert, James C. Carter, John E. Parsons, Clifford A. Hand, Edmund Randolph Robinson, John L. Cadwalader, William B. Hornblower, Elihu Root, and Albert Stickney.



TO WHOM IT MAY CONCERN.

NEW YORK: "NOW YOU SEE WHAT I DID ABOUT IT. GO AND DO LIKEWISE."

(Tweed cartoon, *Harper's Weekly*, 1871.)



of Appeals, was proposed for adoption as early as 1876 by a committee of this association, of which Lewis L. Delafield was chairman.

With regard to lawyers guilty of unprofessional behavior, the by-laws are very precise. It is made the duty of one of the standing committees—the committee on grievances—to thoroughly investigate all such cases which shall be brought properly to its notice, and the association undertakes to prosecute in the courts any individual whom the committee duly accuses. For a number of years after its organization the association confined its proceedings as to unprofessional conduct to its own members; but now its services may be commanded against any attorney who merits punishment for his professional misdeeds. In like manner it stands ready to afford opportunity for vindication to any member of the bar who has been accused wrongfully, or unjustly injured in his reputation. There is probably no more characteristic episode in its history than the personal inquiry which it caused to be instituted at the request of Mr. Charles O'Connor. In 1876, one of the leading newspapers of New York published an article reflecting upon Mr. O'Connor's professional honor. The charge, in brief, was that in the celebrated Forrest divorce case he assumed to serve his client, Mrs. Forrest, gratuitously; that this was the public understanding, in consequence of which he was greeted with much popular acclaim, and at the triumphant conclusion of the case was the recipient of costly presents of silver plate from the ladies of New York and from his professional brethren; but that, a number of years later, upon collecting for Mrs. Forrest a judgment of \$64,000, he paid himself and his associate counsel exorbitant fees. Mr. O'Connor promptly appeared before the Association of the Bar and demanded an investigation. An inquiry tribunal was chosen, composed of several of the most prominent citizens of New York. The tribunal, after due consideration of the charge, pronounced it unfounded and calumnious.<sup>2</sup>

Turning from those aspects of the Bar Association and its career which have to do specially with its relations to the immediate interests of the bench and the bar, we find that it has been constantly active and influential in general public concerns. The limits of this article do not admit of a detailed account of its miscellaneous activities. It will be sufficient to glance briefly at two or three of the more conspicuous and interesting of these undertakings.

Of the standing committees of the association the most important is that on the amendment of the law, which is charged with the duty

<sup>2</sup> The report of the tribunal closed with the following impressive words:

"In conclusion, the undersigned are of opinion that there is no foundation for any of the charges against Mr. O'Connor. Unjust accusations are always to be deplored; for even though they are shown to be so, they are a source of trouble and annoyance to those against whom they are brought. In his case it is well that they have been made and refuted in his lifetime, for they

might otherwise have taken the more dangerous form of a posthumous aspersion. When his late extreme and apparently hopeless illness is considered, his recovery, even to those who are indisposed to regard the events of this life as influenced by any other than natural agencies, will seem almost like a recall from the confines of another world to maintain the most precious of his possessions—a spotless name."



of "watching all proposed changes in the law and of proposing such amendments as in its opinion should be recommended by this association." The committee on the amendment of the law is really, so far as it is proper or possible for a strictly unofficial body to be such, a recognized factor in the legislation of the state. It receives a copy of every bill introduced in the senate and assembly, and follows the entire course of legislation. Moreover, it at times takes the initiative in framing and urging measures deemed desirable; and to this end it is provided in the by-laws that members may at any time submit to the committee "suggestions of existing defects in the law, and of any amendment which they may think desirable."

The prolonged and determined campaign waged by the Association of the Bar, at the instance of its committee on the amendment of the law, against the "proposed civil code," is a striking illustration of its activity and influence in legislative matters.

The constitution of 1846 contained a mandatory provision that three commissioners be appointed "to reduce into a written and systematic code" so much as to them should seem "practicable and expedient" of "the whole body of the law of this state," and "make reports of their proceedings to the legislature

when called on to do so"; in pursuance of which provision three separate commissions were constituted (1849, 1850, and 1857), and in 1865 a proposed civil code was submitted to the legislature in the form of an act composed of 2,034 sections. It was designed that the civil code should be one of "Five Codes," the others being the political code, the penal code, the code of civil procedure, and the code of criminal procedure. It was not, however, until 1879 that the civil code was acted on by the legislature; it was then adopted by both houses, but was vetoed by Governor Robinson.

The Association of the Bar, in view of the great and far-reaching importance of the subject, appointed a special committee ' to make a comprehensive examination of the code and report as to the expediency of its enactment. March 15, 1881, the committee reported that, in the



NEW YORK CUSTOM HOUSE.

opinion of each of its members, "the passage of this statute would be an unmixed evil, fraught with incalculable mischief to every person directly interested in the administration of the law throughout the state;" that the code was not, as its authors claimed, "a code of the common law" of the state—not "an affirmation of what the common law now is," containing no "provisions in derogation of that law," but reached far beyond any such modest scheme and "mingled common law, statutory law, and new law in one common mass, with no designation to guide those who seek to ascertain the proportions of the several ingredients."

This uncompromising attitude of the association was persevered in throughout the notable struggle that followed—although some of its members dissented from the position taken and earnestly favored the code. At first the legislature seemed to be almost unanimous in approval of the scheme. In 1881 the act passed the assembly by a vote of 83 to 3, but the senate, influenced by the strong opposition of the Bar Association, took no action. In 1882, however, the senate also approved the measure, the vote standing 20 to 11. The Bar Association's committee thereupon went before the governor, with the result that a veto was again interposed. In each succeeding year, for five years, the fight was continued, the supporters of the code in the legislature gradually becoming weaker, until in 1888 they practically abandoned the contest.

The Bar Association, while opposed to the civil code, endorsed the penal code. After the enactment of that statute in 1881, a committee of the association, of which Frederic R. Coudert was chairman, made a careful examination of it, and reported against any attempt for its repeal. On the other hand, the bill to establish a code of evidence was pronounced unwise and undesirable, Mr. James C. Carter being chairman of the association's special committee on that subject.

To the efforts of the Association of the Bar the legal profession and the public are mainly indebted for the valuable reforms that have lately been introduced in the system of land transfers.

The association also is entitled to the credit of inaugurating the movement for very much needed reforms in the city offices of New York. In 1872 a committee on extortions was appointed to inquire into illegal exactions in the public offices of the city—especially the offices of the sheriff, county clerk, register, surrogate, and clerks of the various courts. A systematic investigation was prosecuted, which resulted in astounding revelations. It was shown, for instance, that the sheriff's office was so administered as to yield a revenue for its chief of \$100,000 to \$150,000 a year, and that the register realized fully \$40,000 annually from overcharges for recording instruments, and \$20,000 to \$30,000 from illegal fees for searches. The committee,

<sup>1</sup> Clifford A. Hand, Frederic R. Coudert, Elial F. Hall, Charles C. Beaman, Jr., David McClure, and William B. Hornblower.



VIEW OF NEW YORK CITY AND HARBOR.

in its recommendations, went to the root of these abuses, advising that all the officers concerned be paid fixed salaries, that the fees be abolished or reduced so far as practicable, and that all fees still retained be paid into the city treasury. In 1874 a committee of the association<sup>1</sup> appeared at Albany in advocacy of the suggested reforms, and Mr. Lewis L. Delafield made a very able argument setting forth their urgent necessity. In 1877 and 1878 the work was resumed with vigor. The association laid before the governor formal charges of "neglect of duty in office, malversation in office, malfeasance in office and extortion," against the sheriff, county clerk, and register.<sup>2</sup> Governor Robinson, after due investigation, removed County Clerk Gumbleton from office, but decided that the facts did not justify the removal of the register and sheriff.<sup>3</sup>

The changed order of things in the city offices of New York is, therefore, the direct outcome of the agitation begun by the Bar Association and determinedly prosecuted by it for years.

The association, as the representative organization of the New York bar, has in every respect amply realized the best hopes of its founders. In the foregoing review of its public record only the most important of its proceedings have been noticed, and there is no occasion, in an article intended merely to sketch its distinctive history and character, to enlarge further upon this aspect. The essential thing to be observed is that the association has proved itself at all times to be a living and vigorous force, promptly and earnestly interesting itself in leading issues and questions as they arise. There have consequently at different periods been divisions in its councils—some of them rather fundamental and delicate. But experience in this regard has not at all operated toward a modification of the original active spirit, and the association is likely to continue in the exercise of all the energetic qualities that have hitherto distinguished it.

The membership of the association at the time of its formation was not much in excess of two hundred. The roll of members now (February, 1897) shows a total of 1,476, including non-resident and honorary members. It owns and occupies one of the finest and costliest buildings in New York devoted to the uses of a private organization.<sup>4</sup> A magnificent library, ranking as one of the very best law libraries in the world, has been collected, now numbering 51,416 volumes, of which 36,090 were purchased out of the funds of the association and 15,326 were donated by members and others. The

<sup>1</sup> Wheeler H. Peckham, John McKeon, Clifford A. Hand, and Charles Tracy.

<sup>2</sup> The committee representing the association in this matter was composed of Artemas H. Holmes, Henry E. Knox, George De Forest Lord, Charles F. MacLean, and J. Adriance Bush.

<sup>3</sup> The governor's action in removing the county clerk, on the Bar Association's charges, was one of the principal causes of the famous factional convulsion in his

party, resulting in John Kelly's nomination for governor and Robinson's defeat in his candidacy for reelection.

<sup>4</sup> The Bar Association building, 42 West Forty-fourth Street and 43 West Forty-third Street, was completed in July, 1896. The total cost of the property was \$639,950, of which \$203,500 was paid for the land, \$380,700 for the building, and \$55,750 for furniture and hangings.

total cost for books and binding from the beginning has been in excess of \$160,000. Credit is due to the late James Emott, above all the other members of the association, for the organization of the library and its present splendid character.

The following is a list of the presidents of the Association of the Bar from the beginning: William M. Evarts, 1870 to 1879; Stephen P. Nash, 1880 and 1881; Francis N. Bangs, 1882 and 1883; James C. Carter, 1884 and 1885; William Allen Butler, 1886 and 1887; Joseph H. Choate, 1888 and 1889; Frederic R. Coudert, 1890 and 1891; Wheeler H. Peckham, 1892 to 1894; Joseph Larocque, 1895 and 1896; James C. Carter, 1897.



## THE LIBRARY OF THE NEW YORK LAW INSTITUTE.

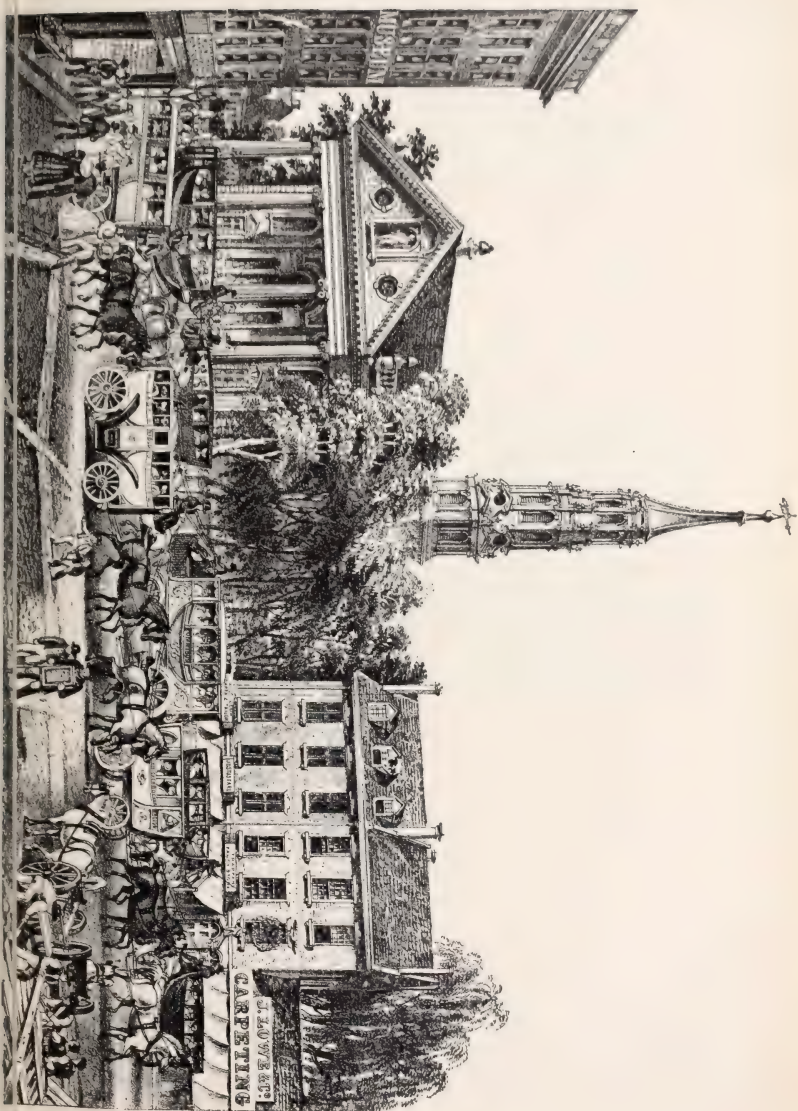


HE early records of the New York Law Institute strengthen the statement of the younger Kent that the establishment of a society law library in the City of New York was owing in a great degree to the influence and exertion of Chancellor Kent. The project grew out of the necessity of providing the legal profession with an extensive and easily accessible collection of books in every department of law, and such collection was manifestly beyond the means of individual members of the bar.

A vivid personal recollection of the disappointments and embarrassments which he experienced in his own youth in consequence of the lack of library facilities may have influenced Charles O'Connor in old age to make his generous and gracious gift to the Law Institute Library. There are incidents in his career that show his lasting gratitude to those who in early life gave him access to the books of his chosen profession. The only collections of law books of any extent or value in or near the City of New York were private—the library of Chancellor Kent and the Bedford House library of Chief-Justice Jay. A union of effort and means became an urgent necessity in order to provide even the active practitioners of the bar with the working tools of their profession.

The first regular meeting of the society, of which any written record is extant, was held in pursuance of notice at the American Hotel, at the corner of Broadway and Barclay street, on the fifth day of February, 1828. At this meeting were present Ogden Hoffman, Thomas Addis Emmet, Hugh Maxwell, James W. Gerard, and nearly all the leading members of the bar. Ex-Judge Jonas Platt was called to the chair, and Charles G. Troup was made secretary. An election being held, James Kent was chosen president and Smith Thompson, Peter A. Jay and Beverly Robinson, vice-presidents of the association. Previously to this meeting, however, on the 19th day of January, 1828, the constitution as drafted by Chancellor Kent had been submitted at a conference held at the residence of William T. McCoun, and it was subscribed by Chancellor Kent, Hugh Maxwell, William T. McCoun, John Duer, James W. Gerard, Daniel Lord, George Sullivan, David Ogden and the others present—nineteen in all.

In the beginning the Law Institute was meant, says Mr. Gerard, "to be very much of the character of the present Bar Association—not merely a library but an association which should, by salutary rules, guard the purity of the profession and hold a check upon the members



through investigation and the power of expulsion." It was, however, found impossible to carry out such views, and they were abandoned and all the energies of the members were turned toward establishing a law library which would contain, as it were, the law of the larger part of the civilized world. In March, 1828, the library of Robert Tillotson was purchased on such liberal and satisfactory terms that by resolution the free use of the library was voted to Mr. Tillotson. In his visits to the city he was to be granted its privileges in the same manner as if he were a regularly elected member.

Chancellor Kent donated a set of his Commentaries on American Law, and Mr. David S. Jones a copy of Statham's Abridgment, a book as old as the early Caxtons and published before Columbus sailed from Palos, and which for many years kept the reputation of having been the first printed book on English law.

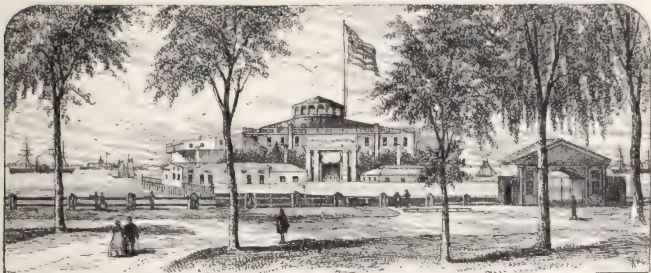
Many of the old classics of the law, rare and valuable reports and commentaries, were the gifts of the accomplished scholar, Peter A. Jay, president of the Historical Society, and the eldest son of Chief-Justice Jay. In the future, upon the Law Institute's tablet of grateful recognition of the friends and lovers of its library, no names will be engraven deeper or more conspicuously than those of Peter A. Jay and Charles O'Connor. The latter is the ever-recurring benefactor, and we run across Jay's name as donor in the books and treasures of the Law Institute library frequently, and with the same pleasurable surprise and interest as we enjoy when we note Brockholst Livingston's name as associate counsel in the great law cases and criminal trials of Alexander Hamilton, Aaron Burr, Richard Harison and Egbert Benson.

In the early part of the year 1830, it was resolved to petition the legislature of the state for an act of incorporation, and accordingly on the 22d day of February, 1830, the Law Institute was duly incorporated by chapter 48 of the laws of 1830. The charter and by-laws enacted in accordance therewith were accepted and adopted at a meeting of the Institute held in the United States court-room on the 12th day of May, 1830. Many of the old historical records of the New York Law Institute have fortunately escaped the devastation and vicissitudes of fire and time, and attached to the charter and by-laws of 1830 are preserved the signatures of the most noted men of the New York bar: James Kent, Thomas Addis Emmet, Hugh Maxwell, John Anthon, George Griffin, David Graham, Samuel Jones, Caleb S. Riggs, Daniel Lord, James W. Gerard, William Kent, J. Prescott Hall, Ogden Hoffman, William M. Price, David Dudley Field, Francis B. Cutting, Charles O'Connor, Samuel J. Tilden, John Jay, William Curtis Noyes, Theodore Sedgwick, John Graham, Richard O'Gorman, John K. Porter, Henry L. Clinton, James T. Brady, William M. Evarts, Joseph H. Choate, Stephen P. Nash, Charles F. Southmayd, Henry D. Sedgwick, Ashbel Green, Robert S. Green, George Bliss, John E. Parsons, Edwards Pierrepont, A. Oakley Hall, John McKeon, Henry Hilton,

Wheeler H. Peckham, Everett P. Wheeler, John E. Burrill, Frederic R. Coudert, William Allen Butler, William A. Beach, Samuel Blatchford, Clarence A. Seward, James C. Carter, Elihu Root, George Hoadly, John F. Dillon, Charles Tracy, Aaron J. Vanderpoel, John T. Hoffman, Edwin W. Stoughton, Frederic W. Hinrichs, John R. Dos Passos, Delos McCurdy, Burton N. Harrison, Albert Stickney, John J. McCook, Francis L. Stetson, Austen G. Fox, William C. Whitney, and many others equally famous, living and dead.

In the Report on the Libraries of the United States, published at Washington in 1876 by the government, is the following reference to the collections of the New York Law Institute as they were in the centennial year :

The Law Institute Library has become a success in the highest and broadest sense, and now furnishes the bench and bar of the city in legal treatises, text books, American and foreign reports, collections of leading cases and trials, resources of incalculable value. The library, now the best public law library in this country,



CASTLE GARDEN, 1850.

contains over 20,000 volumes, complete sets of reports of courts of all the states, the federal courts, the latest revisions of the statutes, complete reports of English, Scotch, Irish, and Canadian courts, one of the best collections of the session laws of all the states, nearly all of the collections of trials, one of the largest collections of English and American law periodicals, next to the library at Washington one of the best collections of French law in the country. It has also a very fine collection on the literature of the law, memoirs and biographies.

To this may also be added as of interest an extract from a recent press notice :

There is probably no other law library in this country which has upon its shelves so rich and valuable a collection of rare works on legal topics. It possesses very full collections of reports of cases in the American, English, Scotch, Irish, and Canadian courts, sets of American and English statute laws, the publications of the English Record Commission, the English House of Lords and House of Commons journals, and session papers going back to 1509. The state papers of England and America are a feature of this institution of peculiar value. Of the documents pertaining to American history are the charters of the American colonies, congress-



sional papers from 1791 and New York state papers since 1691. The English and Irish records, in which this library is peculiarly full and rich, contain complete accounts of the foundation of British and American law.

Among the rare books and documents of the library which will be found to possess interest and attraction not for the lawyer only, but for the antiquarian as well, are the laws of the ancient Greek states, the property laws and constitution of Athens, the political and legal arguments of the Greek statesmen and orators from Antiphon to Isæus, and the laws extracted with skill and discernment by Petitus, Prateio, Dareste, and Pardessus from the works of the orators, historians and philosophers of Greece; the entire body of the Roman law, the ante-Justinian statutes and jurisprudence, the Justinian books and the Romano-Barbarian codes; the *Leges Barbarorum* or laws of the Lombards, Franks, Goths, Vandals, Alemanni and other German tribes;



VIEW OF THE NARROWS.

elegant editions of Hessels and Kern's "*Lex Salica*," and Le Gruchy's "*L'Ancienne Coutume de Normandie*," the *Corpus Juris Canonici* and the ancient constitutions and canons of the church; the Sea Laws of Oléron, Wisby and the Hanse towns; the restored text of "The Black Book of the Admiralty," a venerable book of great authority in the Admiralty Court, and which disappeared from the Admiralty Register in London during the latter part of last century"; "*Guidon de la Mer*," Maritime Chapters and Ordinances of Amalphi; the supposed Rhodian laws; "*Il Consolato del Mare*," of which an edition was published at Barcelona in 1494, and which is the earliest general code of maritime law in modern Europe and, embracing as it does the legislation of many kingdoms, is a valuable monument of the learning of the middle ages; repositories of ancient laws and jurisprudence like the "*Corpus Juris Germanica*," "*Códigos Antiguos de España*," the code of Godfrey de Bouillon, the first Christian King of Jerusalem,



"*Assises et bon Usages de Royaume de Jerusalem*," originally intitled "*Lettres de Sepulchre*," because they were deposited with much ceremony in a great chest in the Church of the Holy Sepulchre; perhaps the best of the feudal collections, and certainly interesting as a code of laws framed by a body composed of all the nations of Europe, of a legislative assembly of gallant knights like Sir Philip Sidney—the flower of the chivalry of the world; the Ottoman codes and the Koran, commonly called the "Alcoran of Mahomet," in French, German, English and the original; the Ordinances of Mennu, translated from the Sanscrit by that elegant scholar, Sir William Jones, "perhaps the only lawyer equally conversant with the year-books of Westminster, the Attic pleadings of Isaus and the sentences of Arabian



EAST RIVER AND NEW YORK BAY FROM THE BRIDGE.

and Persian cadis"; Sir George Staunton's translation of the code comprising the ancient and modern jurisprudence of China; the laws of the Anglo-Saxon kings of England; the laws and the Domesday Book of William the Conqueror; the "*Monumenta Ecclesiastica Anglica*," and the ancient law records preserved in the tower of London; the Senchus Mor or Brehon code of Ireland; the ancient Brehon law tracts; the statutes of the Irish Parliament from 1310 to the close, made famous by the orations of Grattan and the Irish patriots, and containing among many other curious things the law of 1447, entitled "An Act that the King's Officers may travel by Sea from one place to another within the Land of Ireland"; the Acts of the parliaments of Scotland, 1124-1707; Laws of the Scottish Borders and the ancient laws and customs of the burghs of Scotland; the ancient laws and institutes of Wales, containing the three ancient codes and the law of the Kindred and Blood Feud; the *Code Judiciaire* of the French Revolution, published in the year VII. of the Republic; the Ordinances and Statutes of Oliver Cromwell; "*Codice di Napoleone il Grande*

*pel Regno d'Italia*," printed in Milan in 1806; the Laws of Virginia of the time of the Bacon Rebellion; the Yazoo Fraud Act of Georgia, giving rise to opinions by the most eminent lawyers of the day, Robert Goodloe Harper, Alexander Hamilton, Chief-Justice Marshall; the "Scarlet Letter Act" of Massachusetts; the "Aaron Burr Act" of Ohio, and the Laws of the "Chamberlain Legislature" of South Carolina; the Purple Book of Bruges; the laws inscribed upon the wax tablets of Pompeii and the Bronze Table of Aljustsal; the newly-discovered law code of the Cretan Gortyna, reminding us forcibly of the query of the Athenian to the Cretan in Plato's Laws, "Tell me, stranger, is God or a man supposed to be author of your laws?"; the pleadings of the jurist Farinacci in behalf of the beautiful Roman girl Beatrice Cenci, in whose dry law details we may forget Shelley and Guerazzi, but not so easily the sad pathetic face of "the Fair Parricide" that speaks out from the canvas of Guido Reni; the process against the rare heroine Joan of Arc, whose childhood home still stands unchanged in the village of Dorémy; the pleadings of the chivalrous advocate Chaveau de la Garde, who defended Marie Antoinette, Madame Roland and Charlotte Corday, sometimes called the "*Jeanne d'Arc de la Révolution*," who rewarded him for his generous and delicate defence by permitting him as a mark of esteem to pay her prison debts; the trial of Mary Queen of Scots at Frothingay Castle, and of that monarch whose example the Southern Commissioners at Hampton Roads, quoting history, urged Lincoln to follow, whereupon Lincoln, as Jefferson Davis relates, naively replied, "he knew not much history but he did know that Charles I. lost his head"; the ancient Form book or "Image of Instruments," from which was drafted the prelude to Shakespeare's will and his profession of faith (though we do not know if the copy of Shakespeare's solicitor was borrowed from one of the seven lawyers at Stratford or brought with him from his home in Warwick, the castle town in heart of England's romance and history, from whence came Anne, daughter of "the king-maker," so quaintly wooed and won by Richard III., and within whose cloistered chambers of Leicester the cold, chaste, white-souled O'Connor placed his sentimental gift to the memory of Amy Robsart); cases in the Star Chamber, a court of which Lord Somers remarked that whatever its evils, it punished many offenders too big for ordinary justice—"We must not sitt heare to punish poore snakes and lett others goe scot free," is the language of one of its judges; the report of the trial of the "wicked Lord Byron" in the House of Lords for the killing of Mr. Chaworth, a tragedy which we read and recall the romance of the Sherwood Forest, the Harrow-school boy visitor, the pleasure garden, the antique oratory, the diadem of trees, the "Dream" and the pensive silver-winding stream, near which she sleeps in quiet and peace—whom in love-lit phrase the boy-poet often called his "bright morning star of Annesley"; the eighteenth century Wil-

hamsburg Folios, which carry us back as by a painting of Wordsworth Thompson to colonial days in the Old Dominion, even to the spot where Washington made his first venture into authorship, to the site of the historic tavern wherein in 1776 the first college Greek-letter society was born, and close by, within sound of the Yorktown guns, to the old state house in which the boy Jefferson stood listening, pale and anxious, while his friend Patrick Henry seemed to speak "as Homer wrote," and to the famous path and street with which we are all familiar—once thronged with soldiers and statesmen from Brad dock, Lafayette and Hamilton to Winfield Scott, and from Madison, Monroe, Randolph and Marshall to Crittenden, Wirt, Calhoun and Clay, and leading—just as if to typify and guide its students' lives—from college grove to capitol; the ancient law of Holland and the Modern Dutch codes, with the commentaries made classic by the genius of Grotius or the learning of modern writers; the laws and ordinances of New Netherland, 1638–1674; the Duke of York's laws enacted at Hempstead, Long Island, in

THE BROOKLYN BRIDGE.



1664; the old and rare corporation ordinances of the City of New York; the documentary history of the colony and state; the New York City Directories, reaching back almost to the beginning in 1786, and the perfect sets of New York and Brooklyn Corporation Manuals; the Law Register of Alexander Hamilton, from 1795 to his retainer in a case by the Trinity Church Corporation a few weeks before the fatal July day of 1804; the Quaker Girl, or "Manhattan Well" murder case of Burr and Hamilton that gave episode and interest to Fay's "Norman Leslie"; the test case of Hamilton's under the Trespass Act against Tories; the Washington copy of the *Code de Louis XIII.*; the Plantation Laws of Virginia, with autograph of Richard Henry Lee, who moved the Declaration of American Independence; The Note-Book of Chancellor Hardwicke; Lord Chief-Justice Holt's copy of the Eyre MSS. Reports; and many volumes, with autographs, annotations and interesting associations of famous lawyers and jurists and others, the gifts of members, the Kents, father and son, Jay, Evarts, O'Connor, Field, Brady, Bliss, the Abbotts, etc.

The library at the present time ranks as one of the three leading libraries in the world in American and British law literature. Its growth since its organization is indicated by the following figures, showing the number of its volumes in the stated years in which estimates have been made:

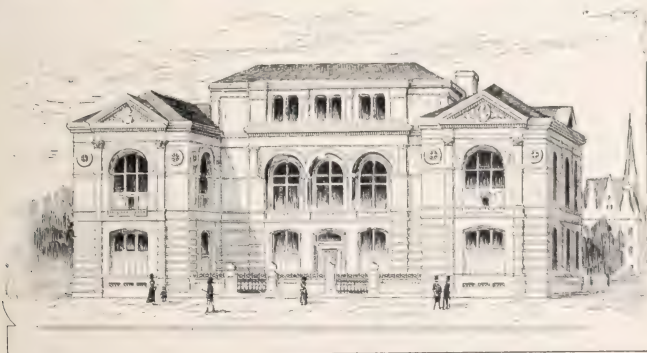
1828.....Library organized.	1869 .....13,500
1842 .....2,413	1876 .....20,270
1851 .....4,544	1880 .....24,391
1855 .....6,000	1885 .....29,560
1860 .....8,550	1897 .....48,257

By an arrangement with the city authorities the library from the first was provided with accommodations in what was known as the "Old City Hall," and when larger space was required rooms were provided in the "New City Hall" on Chambers street, in which it remained until that building was destroyed by fire on the 19th day of January, 1854. By this fire, one of its periodical visitations, the library lost eighty-one volumes and had many others seriously injured. Most of the furniture and the adornments of the rooms were also injured or lost. A committee of the library, consisting of Charles O'Connor and William Curtis Noyes, adjusted the loss with the insurance companies at \$2,250, retaining the books and property injured, and this sum was accepted in compromise and promptly paid. For some time after this fire the library had a shiftless existence, and very often, in its impecunious condition, when its inability to pay rent or other debts was made a matter of record, Charles O'Connor came to its aid with loans of large sums of money. In its hour of trial and tribulation the library was also generously remembered in large donations of books by James R. Whiting, Joseph Blunt, Charles Edwards, Theodore Sedgwick, and the secretaries of state of the several American states.



James T. Brady proved an active friend, and with Charles Tracy made repeated and urgent appeals to the board of supervisors to carry out the fundamental agreement and understanding that was entered into with the corporation at the organization of the society to provide it with suitable rooms for its use; or, at least, to make good the losses that had resulted to the association from the violation of this compact. For a time the library was closed and its books stored, and then they were placed in the basement of the court-house, in quarters so small that only a part of the books could be shelved, so that the utility of the library was much diminished, and the membership in consequence fell off.

In April, 1855, a room was secured on the second floor of No. 45 Chambers street, fronting the park, and in the spring of 1859 the



TENON LIBRARY.

library, by an arrangement with the United States government, was removed to the building in the rear of the United States courts at No. 41 Chambers street. At this time the cost of the books and furniture, as appears by the Brady memorial, had amounted to about \$50,000. In its quarters in the old Burton Theatre building Mr. David E. Wheeler made a bequest of \$1,000 to the library, and Mr. Hugh Maxwell presented it with a costly silver vase and the excellent portraits of Thomas Addis Emmet and Chancellor Kent. The marble bust of its late president, James T. Brady, was presented to the institute shortly after his death in 1869.

Its early and late benefactor, Charles O'Connor, noted for his characteristic, fervent and proud love of the city of his birth, in 1884, by a generous bequest in his last will and testament, executed on the eightieth anniversary of his birthday, gave to the library \$21,000 in cash, all his bound volumes, entitled "My Own Cases" and "My



Opinions," with the silver plate and vase that had been presented to him by the ladies and lawyers of the City of New York.

In May, 1893, David Dudley Field, its oldest living member, presented to the library his private copy of a large photograph of the scene when he proposed an International Code in 1866 before the British Association for the Promotion of Social Science; also an engraved portrait of himself and a valuable collection of books, including complete sets of the annuals and reports of proceedings of international law societies, draft codes of different countries, his own speeches, arguments, and many miscellaneous papers. In February, 1897, Mr. James R. Cuming authorized Mr. Winters as librarian to present to the New York Law Institute in his behalf a marble bust of Francis B. Cutting. It is a beautiful work of art and a faithful likeness of the eminent lawyer. Mr. Cutting was early enrolled a member of the library. He is remembered as an intimate friend of the great leaders of the bar in other days, and as being himself a well-known figure in the profession.

In July, 1875, upon the completion of the new post office building in the City Hall Park, the library was assigned spacious rooms on the fourth floor of that building, and from its removal to the new quarters it entered upon an era of progress and prosperity. It was then under the presidency of Charles O'Connor, whose predecessors in office had been James T. Brady, the peerless orator; John Anthon, the great *nisi prius* advocate, "who began his career amidst a race of giants"; Samuel Jones, who was classed by Mr. O'Connor with John Wells, "the prince of bar orators," and Chancellor Kent of world-wide fame. Aaron J. Vanderpoel, a keen lover of good books, a kindly, considerate official, a public-spirited citizen, one of the best equipped lawyers of the New York City bar and its most popular member, held the position of honorary librarian.

Under the combined influence, intelligent interest and active labors of these two men, the library of course made energetic and rapid strides in usefulness and prosperity, and became favorably known to the profession and to the press and the public as well. Its broken sets were completed, and there was secured an approximately and reasonably complete collection of books in every department of jurisprudence.

In 1888 changes were made in the library rooms under the supervision of the government superintendent of construction, Mr. William J. Fryer, and by a judicious arrangement of galleries and alcoves the shelving capacity of the library was almost doubled. The new classification and re-arrangement of the books have continued to the present time.

On the main entrance floor are kept the law reports, law journals and reports, digests of the United States, the different American states, England, Ireland, Scotland and the Canadian provinces. In the gallery are located the American and English commentaries, the dic-

tionaries, cyclopaedias and books of reference, historical and biographical works, Roman law, trials, the statute law, revisions, codes, digests, session laws and indices to statutes of all English-speaking countries; the codes, commentaries and selected law periodicals of Germany, France, Austria, Spain, Italy, Holland, Belgium, Switzerland, Turkey, Mexico, etc., etc.; and on the uppermost floor the Court of Appeals cases, reports of parliamentary and congressional debates, constitutional convention journals and debates, American and foreign state papers, United States and New York legislative documents and journals, New York City legislative documents and department reports, corporation manuals, books of statistics, atlases and maps, city directories, miscellaneous journals, association reports, House of Lords and House of Commons journals, and the Charles O'Connor and other valuable donations.

Within the limit of this article it is impossible to speak at length or in detail of the particular treasures of the library's collections or of the many volumes with interesting and curious histories and by both contents and bibliographical value worthy of especial and extended notice. The library, however, is not rich in the treasures, fancies, or queer conceits of prosperous book-collectors. A law librarian is apt to value a London imprint of Grotius as much as an Elzevir, and he hardly takes notice if his huge folios are by Machlinia, Pynson, Wynkin de Worde or Baskett. The library possesses no *éditions de luxe* and but few first editions, *éditiones principes* collected as such. Its incunabla came by gift or purchase because of the books' contents and practical utility, and not by reason of the mere date of the imprint or the signatures of famous printers.

Its bindings, especially in the department of foreign law, are noticeable and elegant, but not such as would have justified the sumptuous taste or superb skill of Padeloup, Dérome, Le Gascon, a Grolier or the lovely designs of Clovis Eve, and yet if this magnificent library should be destroyed by fire, from whose dreaded visitations it has made so many narrow escapes, it would be perhaps safe to assert that it would be as impossible to replace it in its integrity as to restore to the book-shelves at Mount Vernon the scattered volumes of Washington's library; or to the apartments of "The Albany" the books, letters and manuscripts of Lord Byron; or to secure the "Corambis" copy of "Hamlet"; or a half dozen copies of Shakespeare's books and letters; or the manuscript plays that were burnt with the Globe Theatre; or a few Valdarfer's Boccaccio, Venice, 1471, the rarest book in the world; or the Naples, 1474, edition of Horace, the rarest of the classics; or the Mentz Cicero of 1465, the first classic put into print; or Cliamaco's book, the first printed in the new world; or the original edition of the book printed at Saint Dié in 1507, first suggesting the name "America" for the newly-discovered western continent; or to find in modern book-marts smaller books than the "Thumb Bible" or

larger than the giant volumes of the Escorial, or cheaper than the bound "Penny Testament," or more curious than the Elegy printed on black paper with white letters; or a perfect copy of the first Aldine Virgil; or the lost Constitutions of Aristotle; or the silent first issue of "Pilgrim's Progress"; or the "Morton's Hope" chronicle of Motley's and Bismarck's student life at Göttingen; or the borrowed copies of Coke and Blackstone, with which Webster and Lincoln began in youth the study of law.<sup>1</sup>



ASTOR LIBRARY.

The work of the recent decade of years and of the new epoch of the library's progress and development may be fitly epitomized and illustrated in the statement that the Law Institute Library has been either the pioneer or of the pioneers:

1. In securing complete sets of American, English, Irish, Scottish, Canadian, and Australian law reports.

2. In attempting to collect the law journals of the United States, England, Canada, Ireland, Scotland, British colonies, France, Germany, Austria, Spain, Italy, Holland, Belgium, Switzerland, etc.

3. In attempting to collect complete sets of the revisions, codes and session laws of each state and territory of the Union, so as to preserve on the shelves of the Law Institute an almost unique and priceless historical memorial of American state and statute literature.

4. In making the attempt to collect official copies of the foreign codes, civil, commercial, criminal, procedure and the standard con-

<sup>1</sup> Since this was written there has come into the possession of the writer Lincoln's first law book, one of the very earliest relics of his boyhood days.

tinental law authors and commentators, illustrated in French literature by the writings of Pardessus, Pothier, Valin, Cleirac, Montesquieu, Vattel, Cujas, D'Aguesseau, Domat, Orfila, Boulay-Paty, Glasson, Hautefeuille, Laurent, Merlin, Loaré, Pouillet, Toullier, Calvo, Pradier-Fodéré, Cauchy, Coudier, Rolin-Jacquemyns, Demolombe, Bédarride, Cresp, Ortolan, Rivière, Desjardins, Valroger—and in German literature by the writings of Savigny, Thibaut, Mittermaier, Feuerbach, Grimm, Hugo, Koch, Kant, Bulmerincq, Holst, Puchta, Grotfend, Heffter, Windscheid, Gareis, Mohl, Lewis, Vangerow, Borchardt, Martens, Dernberg, Sohm, Bar, Bluntschli, Gneist, Holtzendorff, Ihering, and by



BROADWAY, LOOKING NORTH FROM LEONARD STREET.

the recent works of the German collaborators, the Series on Commercial Law, edited by Endemann; German Jurisprudence by Binding; the recent German codes by Bezold; Forensic Medicine by Maschka; International Law by Holtzendorff, and Public Law by Marquardsen.

5. In collecting the English, French and German translations of foreign codes and the miscellaneous writings and association proceedings of the German and French jurists.

6. In collecting the completed works of the statesmen and orators of all times and countries: Demosthanes, Æschines, Pericles, Isocrates, Cæsar, Cicero, Hortensius, Stein, Metternich, Bismarck, Grotius, Richelieu, Mazarin, Neckar, Mirabeau, Talleyrand, Guizot, Thiers,



Cavour, Castelar, Wolsey, More, Bacon, Burleigh, Raleigh, Strafford, Cromwell, Hampden, Temple, Somers, Halifax, Oxford, Bolingbroke, Walpole, Pulteney, Chatham, Chesterfield, Mansfield, Burke, Grattan, Curran, Plunket, Pitt, Fox, Erskine, Sheridan, Windham, Wilberforce, Holland, Mackintosh, Canning, Brougham, Wellington, Grey, Peel, O'Connell, Palmeston, Russell, Bright, Cobden, Beaconsfield, Gladstone, Washington, Franklin, Hamilton, Jefferson, Lee, Henry, Otis, Madison, Monroe, Marshall, Gallatin, Jay, Morris, the Adamses, Ames, Story, Legaré, Prentiss, Wirt, Randolph, Webster, Everett, Winthrop, Clay, Calhoun, Seward, Sumner, Lincoln, Phillips, etc., etc.

7. In collecting the writings and biographical sketches of the great New York lawyers of the past and the present: William M. Evarts, Charles O'Connor, James T. Brady, James W. Gerard, David Dudley Field, Daniel Lord, William Curtis Noyes, Thomas Addis Emmet, Ogden Hoffman, John Wells, James Kent, Brockholst Livingston, Aaron Burr, Alexander Hamilton.

8. In collecting the rare pamphlets, addresses and law arguments of Rufus Choate, Harrison Gray Otis, Thomas S. Grimké, Robert Goodloe Harper, Henry Wheaton, Nathan Dane, Theophilus Parsons, William C. Preston, John Sergeant, Charles G. Loring, Caleb Cushing, Horace Binney, William Pinkney, Henry Stanbery, Richard H. Dana, Jr., George S. Hillard, Benjamin R. Curtis, and others, whose brilliant reputations are fast becoming traditional because the memorials of their busy lives have been preserved in no tangible book shape.

9. In collecting the tracts, pamphlets, essays, magazine articles and newspaper discussions relating to new and important questions of the day, American fisheries, bicycle law, bimetallism, charters and by-laws, civil service reform, club law, codification, commercial trust combinations, constitutional law, corporation law, death penalty, electing United States senators, electricity and motor law, foreign immigration, French spoliation claims, Geneva Arbitration award, habeas corpus, hypnotism as a crime, impeachment trials, in come tax, Indian laws, inheritance tax, international arbitration, international law, interstate commerce, irrigation legislation, Jay's treaty, land registration, law reform, law schools, libraries, light railways, liquor laws, Monroe Doctrine, municipal government, neutrality, New York state and city history, poisons and poisoning trials, presidential elections, rapid transit, referendum, sanitary legislation, social science, South African Republic laws, tariff reform, telephone and telegraph law, theatre law, voting reform, voting trusts, etc., etc.

The Law Institute Library has been one of the first and one of the most active in every movement to make law libraries comprehensive and useful, and, as far as means and time permitted, practically complete. It has made itself an institution worthy of the great metropolis, and by reason of the prestige achieved it is daily visited and used by practical lawyers more than any other library in the world. Its



present officers (1897) are: Joseph H. Choate, president; Edward Patterson and Wheeler H. Peckham, vice-presidents; William P. Chambers, secretary; George H. Adams, treasurer; George C. Holt, Thomas Thacher, Austen G. Fox, James McKeen, Albert Stickney and George G. Frelinghuysen, executive committee, and Clifford A. Hand, James A. McCreery and George G. De Witt, auditing committee.

## PERSONAL REMINISCENCES OF SIXTY YEARS AT THE NEW YORK BAR.<sup>1</sup>



F those who sixty years ago were with me at the bar almost all have "gone forth into the great darkness," and the very names of most of them are as unknown to most of you of this generation as though they had never been. Only two or three remain who can remember them. They were men of study, learning, toil; men of pride, ambition, hope; men who largely shared the public attention and respect. Some of them had fame, some had fortune, some had disappointment—all had death.

At that time there lingered in this city several lawyers whose admission to practice was more than a century ago. Among them were Egbert Benson, Chancellor Kent, Morgan Lewis, Aaron Burr, Josiah Ogden Hoffman, Jacob Morton, Edward Griswold, Jacob Radcliffe, Richard Varick, and Joseph Strong. Of these I think that Chancellor Kent, who died in 1848, survived the longest, and few now present can remember him, while only one or two of us have seen the others whom I have named.

It was my privilege and happiness to pass my clerkship as a student at law in the office of Chancellor Kent, where his son (only less distinguished than the chancellor), William Kent, was associated with him.

The chancellor retired from the bench on the 31st of July, 1823, on completing his sixtieth year, such being the limit of age, under the constitution of 1821 (then in force), to which any incumbent could hold the office. His judicial labors had, of course, received only scanty compensation; but after he withdrew from them, though he never appeared at the bar, yet his opinions, which were eagerly sought, not only here, but from every part of the country, and his services as counsel in important cases, and his great work, *The Commentaries*, were all more amply rewarded. When he left the bench (and indeed to the end of his life), he was in the fulness of his mental vigor, and strength, and wisdom, and of the goodness and gladness of his guileless heart. His serene cheerfulness and kindness delighted all who had intercourse with him. He was "in wit a man, simplicity a child." His personal qualities secured to him the love, as his learning, wisdom, dignity, and purity did the reverence of all. As remarked by Judge Duer, in his eulogium on the chancellor, "Although his life, from his

<sup>1</sup> From an address by the Honorable Benjamin D. Silliman, at the complimentary dinner tendered to him by the bar of New York and Brooklyn, May 24, 1889, the sixtieth anniversary of his admission to practice.



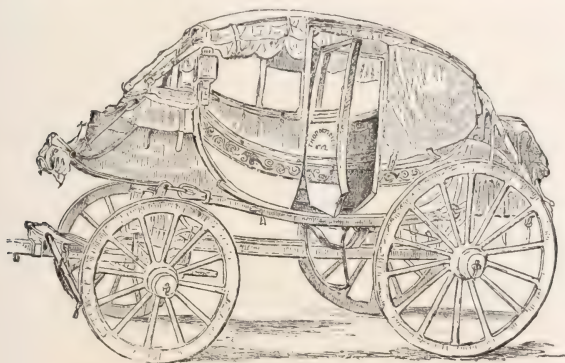
Portrait of J. J. G. G. G.

James G. G.



youth, was emphatically a life of severe and constant labor, exhausting meditation, and resolute self denial, yet these habits had not the effect of impairing in the slightest degree the cheerfulness, the vivacity, and even the gayety of his temper. When he mixed in society, instead of being gloomy, silent, or reserved, he was uniformly lively, social, affable, communicative."

I have never known any other man whose reading and study were so "universal" as his. It could not be said of him, as of Lord Brougham, that "he knew a little about everything, and not much about anything," for the chancellor knew all about everything that he had ever studied, and he had studied almost everything. His great miscellaneous library was "a curiosity," not merely in its number of works on nearly every subject, but in the "commentaries" which he



NEW YORK STAGE COACH, EARLY YEARS OF THE NINETEENTH CENTURY.

had inscribed in almost every volume, showing not only that he had read it thoroughly, but referring to other works (which he had also read) on the same subject, and often criticising and dissenting from the author, or amplifying or qualifying what he had said. In connection with his universal reading was his absolutely phenomenal memory. He literally forgot nothing. A mind so stored, and with its treasures so secured, could not know solitude. It found within itself abundant and choice companionship. On this point I may repeat (what I mentioned on another occasion) that during his last illness he passed many long and silent watches of the night without sleep. When asked whether in those solitary hours he suffered from sadness and depression, he replied that he did not, but that, on the contrary, he then derived great satisfaction in mentally reviewing sometimes some leading rule of law, going back to its origin, to the reasons from which it sprang, and then recalling in their order the



subsequent cases in England and in this country in which it had been considered, shaped, enlarged, or qualified, down to the final settled rule; at other times he would select some period of history, perhaps some English reign, and recall its politics, its law, its eminent men, its military acts, and its literature, in connection with the contemporaneous history and condition of other countries—sometimes a campaign, perhaps of Alexander, or Cæsar, or Marlborough, or Napoleon, with its plan, its policy, its incidents, and its results.

But, gentlemen, though I never tire when Chancellor Kent is the theme, I must remember that I may tire you.

At the remote time of which I have spoken (1829), Judges Hoffman and Jones were on the bench of the Superior Court, and of the other ancient lawyers to whom I have alluded Aaron Burr was the only one then prominent and eminent at the bar, though he can hardly be said to have been at that time engaged in general practice.

Colonel Burr's personal appearance was remarkable. His black eyes were keen and penetrating. He was small in stature, and slender, yet very formal, dignified, reserved, and stately in his bearing. Whether in the court-room, the street, or elsewhere, he seemed isolated and alone,

Among them, but not of them; in a shroud  
Of thoughts which were not their thoughts.

I once called on him with Doctor Hosack, who was the surgeon in the duel between General Hamilton and Colonel Burr, and passed an hour with him at his house in Reade street (in the rear of the Stewart building), and was impressed by the grace and elegance of his manners, and the ease and interest of his conversation, which, however, was captious and cynical as regarded men of the Revolution. He said that we had no just idea of their relative merit or importance, or of their action—that he at one time intended to write a history of that period, and to that end had (when in the senate) with his own hand largely transcribed from documents to which he then had access, but that his manuscript, with much other material which he had collected for his work, was lost or destroyed, and that he had no longer sufficient interest in the subject to induce him to renew his labor. He added that it was moreover now too late—that the world had adopted the lie as its creed, and that it preferred to believe and would adhere to that lie rather than substitute the truth.

Colonel Burr died in September, 1836, at the age of eighty—thirty-two years after he killed General Hamilton.

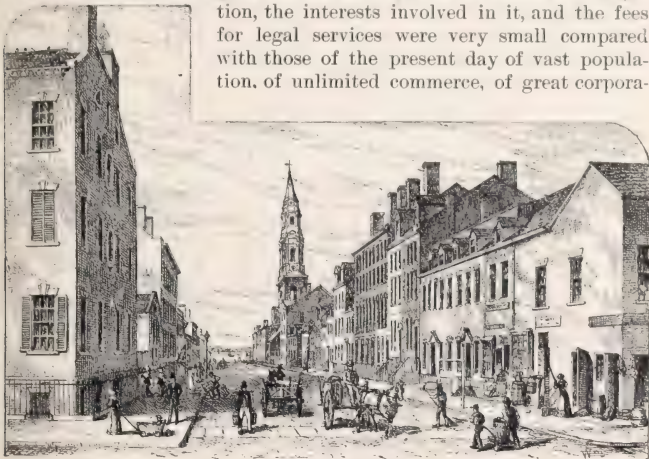
Sixty years ago the world was away back from where it is now. We live in a very different world from that of 1829. Then the vast West was an unexplored wilderness; the Oregon heard

no sound save its own dashings;

no steamer crossed the sea; no telegraph annihilated distance; no

submarine cable united continents; the telephone and photograph were unknown; no electric light converted night into day; no rail road penetrated the wilderness, or brought distant cities and regions into close proximity and prosperous intercourse.

The country was then poor; the people were poor; the compensation for labor, whether manual or professional, was meagre; money was scarce, and it was as difficult (save by statute) to keep down the rate of interest to seven per cent. as it is now to raise it up to four. New York was thriving in a moderate way, but the amount of litigation, the interests involved in it, and the fees for legal services were very small compared with those of the present day of vast population, of unlimited commerce, of great corpora-



MURRAY STREET IN 1822.

tions, of unbounded wealth, and of the new and varied and momentous and constantly occurring questions arising from such a changed condition.

Gentlemen, I do not propose to "fight all the battles o'er again," but, with your leave, will refer to some few of the many changes affecting our calling which have occurred since my admission to the bar.

The judicial and professional force at the earlier period of which I have spoken was widely different from that of to-day. Then there were in this city about 495 lawyers, now there are some 5,575. Then there were in Brooklyn 14 lawyers, now there are some 1,660. Respecting a substantial part of professional business, I may mention that sixty years ago (1829) in the register's office in this city the volumes (or, as we classically term them, *libers*) of recorded deeds were 242. There are now 2,227. The volumes of recorded mortgages were 132. There are now 2,425. The volumes of recorded deeds in the Brooklyn

register's office were then 25. There are now 1,887. The volumes of recorded mortgages were then 18. There are now 2,099. In the surrogate's office in this city there were of recorded wills 64 volumes. There are now 415. In the surrogate's office in Brooklyn (Kings county) there were but 3 volumes of wills. There are now 140.

As showing the small amount of business at that time in the surrogate's office in Kings county, I may mention that the surrogate (the Honorable Jeremiah Lott) held his court on Tuesdays, from 9 to 10 A.M., at his dwelling-house in Flatbush, where, in his desk, were contained all the records of his office. He had no clerk, but wrote with his own hand all the entries and papers, and the copies of all documentary instruments and proceedings. He at the same time conducted his large rich farms, and also his business as surveyor. His Honor, Judge Abbott, in administering the same office in his marble hall in Brooklyn, with the aid of his experienced and able adjutant, Mr. Voorhees, and of his many skilled and busy clerks, now finds little time for his farm on Shelter Island, and can "survey" only his official field.

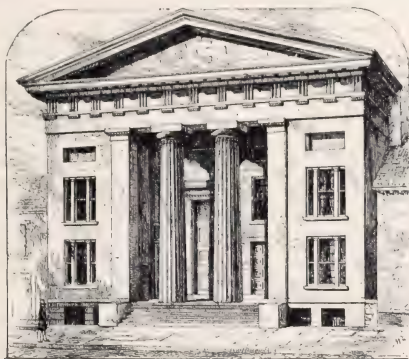
In 1829 the whole judicial force of the state was but a "corporal's guard" compared with that of to-day. The Supreme Court consisted of but three judges, John Savage being the chief-justice, and Jacob Sutherland and William L. Marcy the associate-justices. They held but four general terms annually, viz., at Albany in January and October, in this city in May, and at Utica in July.

The special terms were held not here but at Albany, on two days in each of seven months during the year. Mr. Field, Judge Gilbert, and Mr. Man, who are here to-night, and who, though still young, were in practice before the days of railroads, have no doubt shivering recollections of our stage coach and stage-sleigh day-and-night winter journeys thither over the Highlands and through the snow-drifts, and often on the upper part of the river itself, when the ice was thick enough to bear the weight—and with an occasional capsize. The stage drivers were not all members of the temperance society. A route often taken, when the East River was not clogged by ice, was by water to New Haven and thence overland by stage or private conveyance to Albany.

I have a vivid memory of the arctic coldness on the night of the great fire of December, 1835 (which destroyed most of this city below Wall street), colder, it was said, than had been known in fifty years. My companions in the sleigh, on the following night, on our long return journey from Albany (after our work was done at the special term), were Theodore Eames, an amiable and upright man and good lawyer; Gabriel Furman, an antiquarian scholar, and afterward a member of the senate and Court of Errors; Henry C. Murphy, conspicuous as a lawyer, a member of the state senate and of congress, and minister of the United States at the Hague; the noble Robert Emmet,

afterward a judge of the Superior Court; and William Kent—all long since dead.

Samuel Stevens, Azor Taber, Marcus T. Reynolds, James Edwards, and others of the Albany brethren, were consignees of motions there, but it was very often necessary for New York counsel to attend in person, instead of delegating their cases to others. Those motion days were, however, like the general terms, welcome and pleasant, for they brought together leading members of the bar from other counties, and thus friendly acquaintance and cherished relations arose between prominent lawyers from all parts of the state. Delightful memories remain of the rendezvous on those occasions of clever men, of learned men, of wits, and of friends, at the capitol, at Congress Hall, and at Cruttenden's.



BOWERY THEATRE, 1826.

There were eight circuit judges, one for each of the eight circuits (corresponding with the senate districts) into which the state was divided. This circuit consisted of New York, Richmond, Kings, Queens, and Suffolk counties. Thus one circuit judge then sufficed for this city and for the other four counties. He also performed the duties of vice-chancellor. That the pressure of business in Kings county was not overwhelming in 1829 may be inferred from the fact that, although Judge Edwards held three circuits there, but two causes were tried during the year. The number tried and disposed of at circuit there last year was 660, and the number on the calendar 1,350.

At that early day there was some ceremony in opening the Kings county circuit, which was held at Flatbush, the court-house and jail being in one building. All in attendance assembled at the tavern—the ancient sign in front of which still bore the ante-revolutionary device of the Lion and the Unicorn fighting for the crown—and, on the



tolling of the bell, moved in solemn and grand procession to the court-house, the sheriff with stately pace leading the column, and followed by the judge, at whose side marched the county clerk, then came the bar, then the grand jurors, and then the petit jurors and others.

Cupidity was certainly not an impulse to ambition for judicial station. The salaries of each of the three justices of the Supreme Court and of the chancellor were \$2,000. After serving many years, Chief-Justice Savage found this compensation so inadequate that in 1836 he resigned his seat on the bench to be appointed by his associates as clerk of the court at Utica; and, for the like reason, Judge Sutherland in 1835 resigned, and was appointed clerk of the same court at Geneva.

The salary of each of the circuit judges was \$1,250. They were also entitled to certain fees for particular services, such (*inter alia*) as

for signing a judgment, 12½ cents, and taxing costs, 50 cents. My old cost books contain the signatures of great and most honored judges' taxing bills, including such items for themselves. One shudders at the thought of what would be the fate of an old lawyer, of the earlier dispensation, who should return to practice and, unaware of the changes that have intervened, should approach one of the honored



WASHINGTON HALL, BROADWAY.

judges now present, and offer him 12½ cents to sign a judgment; or a dollar for an order. The amazed attorney would soon be introduced to what he had before known only by reputation, the Tombs, or Ludlow street jail.

A special bounty of \$1.50 was given to the judge of this circuit for each cause noticed for trial in the city of New York, but, in the cautious and rigid words of the statute, "not more than once in any one cause."

In those days of stinted daily bread for high judicial officers, no objection, so far as I can recollect, was suggested when a judge sought to provide, if not for "his household," for his kindred, by some of the merely ministerial patronage within his gift. Thus Chancellor Kent, than whom the whitest snow was not more pure, appointed his brother, Mr. Moss Kent, as register of the Court of Chancery. Chancellor Walworth made his two brothers, John and Hiram, successively assistant register of the same court in this city. Chief-Justice Jones made his relative, Mr. Charles A. Clinton, clerk of the Superior Court. On Mr. Clinton's death or resignation, Judge Oakley's brother was placed



in the same office. Judge Nelson, of the Supreme Court of the United States, appointed his son and afterward his son-in-law as clerks of the United States Courts in this city, and Judge Betts, of the United States District Court, appointed successively his brother and his son as clerks of that court.

I would not advert to these historic facts if they implied a shadow of fault in either of the judges, or in those whom they thus appointed.

But sixty years ago the judicial force was even then inadequate, and, in 1828, the Superior Court in this city was established. Its high character was fixed at the outset. Three great lawyers, each then at the zenith of his fame, were placed on its bench, Samuel Jones, the very able and deeply learned ex-chancellor; Josiah Ogden Hoffman, than whom, in his time, there was no higher authority on commercial law; and Thomas J. Oakley, a great *nisi prius* lawyer and judge independent of the books. He was withal an insatiate novel reader. His charge to the jury was always the sun dispelling all clouds. They and their successors have by their decisions largely fixed commercial law with almost the force of statutory legislation.

The Court of Common Pleas was a favorite tribunal with the bar. The Honorable John T. Irving (brother of Washington Irving) and Honorable Michael Ulshoeffer were its judges.

In 1831 the Vice-Chancellor's Court in this city was established, and an excellent lawyer and excellent man, the Honorable William T. McCoun, was placed on its bench, and in 1839 an assistant vice-chancellor, the learned and genial Murray Hoffman, was appointed.

In Brooklyn the City Court was created in 1849, and the able judges of that court and of the County Court have efficiently co-operated with their brethren of the Supreme Court in disposing of the great number of cases arising in that district.

During the cycle of sixty years of which I have spoken, very great changes have been made in the law itself, adapting it not only with common law plasticity, but by bold yet cautious statutory surgery to the altered conditions of society.

With your leave, gentlemen, I will allude to a few of these changes, as most of them were before your time, though you are familiar with their history.

First and foremost, in 1829, the first volume of the revised statutes made its appearance, and soon after the residue of that great revolutionary work took place. The changes made by it were far reaching, and radically altered a large portion of the previous law, especially that relating to uses and trusts and powers. It substituted a simple and precise code as to the creation and alienation of estates, and simplified and reduced to more of certainty the practice of the courts.

Most of the old lawyers received it not only with the "cold shoulder," but many of them with maledictions, and when thereafter, as sometimes happened in the course of business, their opinions or

actions were faulty because not in accordance with provisions of that work, the fault was indignantly ascribed to the statute and not to the lawyer, and he felt relieved from any imputation of fault if he could show himself in accordance with the previous law, and how wrong therefore the new statute was.

Experience and the reports have made us all acquainted with the many questions that have arisen, but are now no longer open, under that great code, which has relieved us from much law and many rules based on other and early conditions of the world no longer existing—rules and law which had outlived the reasons of their creation, and which had become instruments of frequent embarrassment and wrong.

We of the profession are enriched by the admirable address on the subject of "The Revision and the Revisers," delivered before the Association of the Bar in January last by our well-beloved brother, William Allen Butler. It is a lucid and instructive history of "the earliest recorded effort at a written system of governmental statute law for an English-speaking people," and a most interesting memorial of the eminent lawyers who constructed the great work.

Another change, and which was at the time deemed by very many to be almost agrarian, was the abolition of imprisonment for debt (in 1831). Against the measure it was urged that *Fi Fas* were almost always returned *nulla bona*, while on *Ca Sas* very large amounts were promptly paid. Cases of actual oppression under the law were rare, because honest debtors seldom failed to obtain bail for the limits, and absolute discharges of such debtors under the insolvent laws were readily obtained. But imprisonment for debt of any but dishonest debtors was abolished, and no sane person nowadays would think of reinstating it. By parallel provision of law, household furniture is no longer liable to distraint for rent; and the enlightened philanthropy of Hamilton Fish secured, while he was governor of the state, immunity of every homestead (not exceeding a specified value), from sale on execution.

Still another change (in 1847) subversive of a settled rule, I might almost say principle, of law was that of allowing parties to suits, and other interested witnesses, to testify on trial of causes. This innovation was regarded with great disfavor by conservative men, but though under the law as it now stands cases doubtless occur in which interested false witnesses thwart justice, yet the great pervading and detecting power of truth—*magna est et prevalebit*—generally discovers and defeats the falsehood. I think that the experience and judgment of the courts and the profession on the whole sustain the change, and would be adverse to a reinstatement of the rule that interest should exclude the witness.

Whether the laws of 1848-49, changing the property relations and powers of husbands and wives, and the severance of interests which those laws have effected, are an unmixed good, may be questioned.

I will only allude further to the general laws under which corporations may be now created almost without limit. An early example was that of the general banking act in 1838, afterwards adopted in substance by congress as the model of the national banking law. As more than one corporation could not then be created by one act, this was so framed as to avoid the prohibition, and the Court of Errors decided that, though an association formed under it was in fact a corporation, yet it was not such a corporation as the constitution of 1821 prohibited.

The constitution of 1821, under which the general banking act of 1838 was formed, forbade that any corporation should be created save by a special act, while, on the other hand, the constitution of 1846 prohibited special charters except for municipal purposes, and authorized general laws under which mankind at large in this state can now become corporations for almost any conceivable business. To railroad corporations thus authorized is delegated (perhaps necessarily) the extreme right of eminent domain, the exercise of which by banded speculators is full of peril, and often of oppression, to owners of real property.

The abolition of the Court

BROADWAY, BETWEEN GRAND AND HOWARD STREETS, 1840.



of Chancery as a distinct tribunal in 1847, and the vesting its powers in the Supreme Court, was another striking act. The people of the state had always revered it. Chancellor Kent had shed lustre on it, and his successors, especially Walworth, the last of the chancellors, had maintained its high repute. Chancery practice was not generally understood in 1829, and was conducted by a small portion of the bar.

But equity law is now administered by the courts as effectively—possibly not as learnedly—as before, and in this state and in England (following our example) a separate court of chancery no longer exists.

By the provisions of the constitution of 1846 the time-honored Court for the Trial of Impeachments and the Correction of Errors ceased to be, and in its stead was established our present final tribunal, the Court of Appeals. The former seemed ill-constituted, as it consisted of thirty-three presumably lay members (the lieutenant-governor and the senators), while there were but four law judges (the chancellor and the three judges of the Supreme Court). The chancellor did not sit on the hearing of appeals from his decisions, nor did the judges of the Supreme Court at the hearing on writs of error from theirs. Yet the decisions of the Court of Errors ranked very high in the jurisprudence of the country. It always happened that some of the senators were able lawyers, and most of the others were practical men of business experience and sound judgment, and their strong good sense, blending with the learned wisdom of the judges, mitigated merely technical or over-rigid rules of law where they conflicted with substantial justice, and resulted in rational decisions on reasonable, instead of harsh, application of those rules. As “mind governs matter,” it followed that such of the other lay members of the court as had no knowledge and little judgment “concurred” in what their wiser brethren did, and became practically as harmless as those worthy rural dignitaries whom we have all seen sitting solemn and silent on the bench by the side of the circuit judge.

I believe that, by the general voice of the bar, the Court of Errors was one of the very strongest judicial tribunals in this country.

To it has succeeded a court of grand ability. Like its predecessor it passes on questions of more importance, both as regards the amounts and the principles involved, than any other. Its decisions are very generally adopted and applied in other states, and become in effect the law of the land. The decisions of the Supreme Court of the United States are, of course, paramount on questions within its exclusive jurisdiction, but on those relating to commerce, of which this city is the great fountain and centre, our Court of Appeals is practically the law-giver.

The constitution of 1846 provided for an elective judiciary. Great was the anxiety as to the experiment. General has been the satisfaction as to the results.

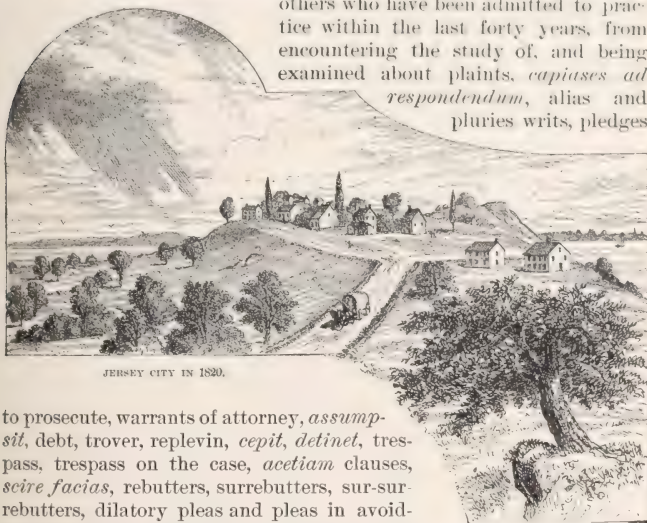
The change created by the code of procedure of 1848, of which our learned brother, David D. Field, was the chief author, abolishing forms of action and assimilating the practice to former chancery practice, was



indeed a revolution, and none would care now to return to the state which preceded it. Its wisdom and its efficiency are attested by its general adoption in twenty-seven states and territories, and its principle in England and Ireland, and in many of the English colonies. When proposed it met with the like opposition to that which the revised statutes encountered, and with the like ultimate acquiescence.

Who now would consent to restore the ancient technicalities that encumbered the practice and from which the code was an act of emancipation?

It has relieved Professor Dwight's accomplished graduates, and others who have been admitted to practice within the last forty years, from encountering the study of, and being examined about *plaints, capiases ad respondendum*, alias and pluries writs, pledges



JERSEY CITY IN 1820.

to prosecute, warrants of attorney, *assumpsit*, debt, trover, replevin, *cepit, detinet*, trespass, trespass on the case, *acetiam* clauses, *scire facias*, rebutters, surrebutters, sur-sur-rebutters, dilatory pleas and pleas in avoidance, *nil dicits*, imparlances, circuit rolls and entries, writs of *feri facias, capiases ad satisfaciendum*, and a heap of other technical literature (now lying in the chaos in which I have named it), and which has ceased to "tangle justice in a net of forms."

Speaking of pleading recalls one in actions against counsellors of the court. The defendant was always described in the declaration as "A. B., gentleman, one of the counsellors of this honorable court," and when he was again (as he was often) further alluded to in the declaration, he was described as "the said A. B., gentleman, one," etc. I well remember that often when old lawyers met it was their habit to salute one another, not as we do now with "Good morning, counsellor," but "Good morning, gentleman, one," etc.

To cite all the changes which have been made since 1820 would, of



course, be impracticable, even were it desirable at this time. Those mentioned were in accordance with the altered condition of human affairs. They were not effected by revolution or state craft, but by the wisdom of the people of the state, and are an added proof of the adequacy of popular government.

I have referred only to statutory changes of the law, and not to those modifications which have resulted in sixty years from cases distinguished, doubted, or overruled ; or to the new law resulting from the use of steam and electricity as agents in the affairs of mankind.

Though our profession are, as a class, *laudatores temporis acti*, yet with all their regard for precedents they have ever been prompt and zealous in promoting needed reforms. In all of that character which I have named they have been pioneers and advocates, and they have rejected and defeated much that was perilous.

To return to the period of 1829 (if you are not too weary of that date), I would add that the summits of the profession were then attained mostly by those who added eloquence to learning and logic, and it was eloquence of indeed a high order when John Wells and Thomas Addis Emmett and their peers were the orators. Not only clients and jurors and the people hungered and thirsted for it, but the judges themselves coveted it, and promoted it by sessions of indefinite length. There were fewer objects of public attraction then than now. The courts were resorts of popular interest, and when a great case was to be tried or argued by great lawyers the court-room would be thronged by eager listeners, laymen as well as the bar. Mr. Wells, who died just before that period (in 1823), was reputed at once as the most learned lawyer, thorough classical scholar, and brilliant orator at the bar, and his fame lingered long in the profession. Mr. Emmett's reputation was hardly less distinguished.

Lawyers had time then to acquire and cultivate such graces and accomplishments ; courts and juries and audiences had time to listen to and delight in them, but as business increased and time became more precious eloquence diminished, and nowadays is rarely heard in court. It is seldom attempted and is not expected. It is out of date. With crowded calendars there is so little time to listen to it that it would now be almost as much out of place in court as in the board of brokers. Our judges would make short work with Demosthenes and Cicero. With a rap on the desk, the judge would tell either of them to confine himself to the case, and remind him that his time was limited to an hour.

But although the poetry of the bar is thus abated, its prose was never more vigorous, substantial and powerful. It never more abounded in thorough lawyers, close reasoners and effective advocates. In making this allegation my proofs are present here to-night. *Circumspice!* It is certain that our predecessors had few, if any, cases involving such grave questions and vast amounts as those which are now of almost

every-day occurrence, and which are conducted by counsel with consummate skill and strength. Incident to this increase of burden is a proportionate increase of the *quiddam honorarium* which even lawyers occasionally consent to receive. Brethren of this generation, you are in very "green pastures," although you are not by "still waters."

It was easier to become a thoroughly learned lawyer in those earlier days than it is now. There was then less of law to be learned, and there was more of time in which to learn it. The world was not in such a hurry then. Kent and Hamilton and Spencer and Burr and Harison and Wells and Emmett and Hoffman and Jones and their cotemporaries had few books to study. Their libraries could almost stand on their mantels. They drew their knowledge from Plowden Coke, Lyttleton, the Year Books, Grotius, Puffendorf, Vattel, Emerigon, as well as Blackstone, the fountains of the law. Men of this generation must draw theirs from the torrents and the floods as well. The men of the earlier date were not drowned in, or swept away, as we are liable to be in this by the great deluge of reports and treatises. When Chancellor Kent was admitted to the bar in 1785 there was not a solitary volume of reports of any court in this country. The first,

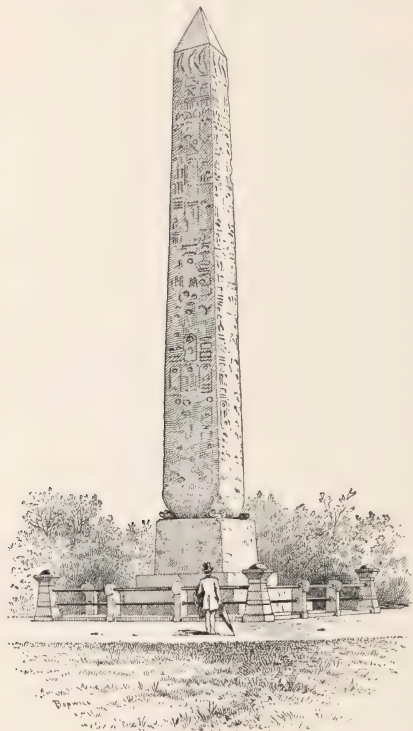


FORT LEE FIFTY YEARS AGO.

I believe, was that of Kirby (Connecticut) in 1789, and the first of any court in this state was in 1794, when Coleman's and Caine's Cases appeared. Now there are of reports of the courts of this state alone no less than 656 volumes. When we add to these the unceasing cataracts—the "blizzards"—of reports from the other states, the United States, and from England, we realize that the profession of law to-day is, in very truth, *experimentum difficile* and very different from the holiday journey and calling of our classic predecessors.

As I remember the ancient New York lawyers of whom I have spoken, there was much more of stateliness, reserve, and formality than prevail at this day; but I think the experience of the older members of the bar who are here to-night will sustain me in saying that the personal relations between the gentlemen of the profession, and between them and the bench, have not been at any time more courteous and congenial than now. Sixty years ago there was in the bearing of lawyers toward one another, perhaps somewhat more than at this time, of the punctilio generally imputed to the days of duelling. Two at least

of the learned judges in this city, then on the bench, had been wounded in duels. Three other members of the bar occur to me at the moment who had been so unfortunate as to kill their adversaries, and others had been engaged in such affairs. But compulsion is not now, if it ever was, essential to courtesy. The amenities of life result from indi-



OBELISK, CENTRAL PARK.

vidual and social refinement, and the exaction of public sentiment. Now, too, the libraries, the Bar Association, and clubs bring the profession into closer intercourse and relations, and convert into companions and friends intellectual and cultivated men, who would else rarely meet except on occasions of business, and who would exercise no combined influence, as they now do, on public opinion and interests. Such intercourse abates the asperity of even political differences, and leads to respect and good will between men who in public affairs have a common aim, though they may not be in accord as to the best mode of attaining it. In that spirit we all cordially welcome the return of the very distinguished statesman<sup>1</sup> who, resuming his place in the pro-

fession, will make New York his home. Our sincere good wishes are for his continued prosperity and happiness.

Gentlemen, when I learned that I should have the honor of addressing you this evening, my impulse was to sketch the characters of some of our eminent brethren who have passed away. But were I to do so, where should I begin, and where should I stop?

<sup>1</sup> President Cleveland

It is a sad truth that the fame, and even the memory, of the most illustrious of our profession are almost as brief as their lives. Unless coupled with judicial or high political position they vanish from memory when they vanish from the stage. The very names of a large portion of the prominent lawyers of my earlier day are, as I have said, unknown to most of the younger gentlemen now present. The judge is preserved in the reports which bear the record of his learning and his wisdom, and the achievements of the statesmen are inscribed in history; but though Alexander Hamilton and Edward Livingston and James Kent and Ambrose Spencer and Josiah Ogden Hoffman and Samuel Jones were lawyers of consummate ability and distinction in their day, their fame would have ceased ere this but for their careers on the bench, or their action in the government of the country, save Chancellor Kent, who would live in his invaluable Commentaries.

In my span at the bar what a host of noble men have gone from it in close procession to the grave!

Would that the time permitted me even to recite their names; would that it permitted me to give adequate sketches of Abraham Van Vechten, of Albany, the patriarch of the bar, whose unbounded knowledge of the law and exalted character and powerful reasoning made him honored of all men; the grand and genial David B. Ogden, of whom Chief-Justice Marshall said that "when he had stated his case, it was already well argued"; Peter A. Jay, the scholarly, refined, and profound lawyer; William Slosson and Thomas Ludlow Ogden and George W. Strong and Jonathan Miller, on each of whom clients safely relied in all matters affecting their estates and last wills and testaments; the very lofty, learned, and accomplished John Duer, to whom, with his pure, wise, and learned associate Benjamin F. Butler, and the clear and strong John C. Spencer, we owe the revised statutes; the right-minded and clear-headed Daniel Lord, for many years the leading commercial lawyer in this city, who, when the facts were stated, so immediately saw the whole case and what he termed "the morality" of it, and the law governing it, that his first argument of it in the court below was hardly surpassed by his final argument of it in the Court of Errors or Appeals. he had quick perception of character; I recollect his speaking to me of a youth then studying law, whom he had lately met, and who, he said, would surely become very distinguished (I would mention the name of that youth but for the presence of Mr. Choate); the fascinating Ogden Hoffman, the Erskine of our bar, who left the navy for the law, at which, like his father, he became powerful and eminent, and captivated all by his wit and his wonderful eloquence; his voice was music from the note of a lute to the blast of a bugle; William Kent, whom everybody loved and admired; like his father, he read everything and forgot nothing; whenever he was seen in court, all waited to hear him, for even on a common motion he could not avoid charming his hearers alike by his polished wit, his sound law, and his beautiful diction;



Marshall S. Bidwell, than whom no better man or lawyer lived ; Prescott Hall, William C. Noyes, Edward Sanford, Nicholas Hill, and Francis Cutting, each a gentleman respected and loved by his peers, each master of the law, and each very eminent, powerful, and successful in enforcing the rights of his clients ; George Wood, conspicuous for his wonderful learning, his wonderful power in stating, and his mathematical power in arguing his cases ; James T. Brady, whose genial nature, wide learning, and masterly eloquence made him one of the strongest and most conspicuous men of his day ; James W. Gerard, irresistible socially and at *nisi prius*, he bewitched juries, convinced the courts, and was an unsurpassed favorite with the bar ; John Anthon, who for years monopolized the Superior Court, in which it was



FORT WADSWORTH.

said of him that "he resided," and whose light reading was the Greek and Latin classics ; William Mitchell, the manly, gentle, strong, and learned judge ; Edgar S. Van Winkle, a wise guide and counsellor of trustees of banks and other corporations and of great estates ; Chief-Justice Samuel Jones, at one time chancellor, for many years judge of the Superior Court and afterward of the Supreme Court, and of whom we all spoke, not irreverently, as "the old chief," than whom, perhaps, no more learned judge or able lawyer, save Chancellor Kent, could be named at the bar. When he left the bench, he returned to the practice, in which he continued to his death. Grave, reserved, and dignified as he was in manner, no man enjoyed in youth more than he did in his old age the pleasures of society and of festive, social entertainments. We all used to wonder that at fourscore years his tastes and sympathies were so keen, and that at and after midnight convivial fes-



tivities were so attractive to him. But I confess that of late I view this in a different light, and do not now wonder, or perceive any reason, why he should not have enjoyed them as he did.

But I must stop. I have trespassed too much on your hours, and yet I have not named a tithe of the good men and strong, judges and lawyers, whose memories shall be preserved by enduring records—men among the ablest and foremost of their day, such as Smith Thompson, the justice of the Supreme Court of the United States for this circuit, grave, austere, the very incarnation of judicial dignity and power; his successor in that office, Samuel Nelson, formerly chief-justice of this state, the most imperial man in his personal appearance and bearing on the bench I ever saw, unsurpassed in clear, strong, sound sense and good law, honored and loved by the bar, and the pride of the state; the great admiralty judge, Samuel R. Betts; the excellent lawyers and judges, Samuel A. Talcott, Charles O'Connor, George Griffin, Henry R. Storrs, Peter W. Radcliff, Henry E. Davies, John A. Lott, John W. Brown, Grenville T. Jenks, James Emott, Joseph S. Bosworth, John Van Buren, Lewis B. Woodruff, the Emmetts, the Sandfords, Joshua Spencer, George and Edward Curtis, E. H. Owen, Samuel B. Ruggles, Josiah Sutherland, Benjamin W. Bonney, George R. J. Bowdoin, Quincy Morton, Hugh Maxwell, Thomas L. Wells, G. G. Van Wogenen, the Blunts, Humphrey H. Anderson, Benjamin K. True, David Graham, Hiram Ketchum, David S. Jones, Greene C. Bronson, John W. Edwards, Elisha W. King, John L. Mason, Ambrose L. Jordan, John Cleveland, Anthony L. Robertson, Charles P. Kirkland, Alexander W. Bradford, Erastus C. Benedict, Charles W. Sanford, William A. Beach, Elijah Paine, George Wilson, and very many others of equal worth. I might well, did time permit, recall the names of the eminent judges of the courts, and of the renowned lawyers of the interior of the state, and of such of our honored brethren as have more recently passed away.

I am well aware that gentlemen present, who did not know those whom I have named, will think that I have dealt in unmeaning because unsparing eulogies. But, "my conscience bearing me witness," I have uttered no word respecting any of them which they did not merit; and the one or two contemporaries of all of them who survive and are present here will, I am sure, concur in what I have said of them. Full well I know how vain is this mere mention of the names which, while lingering here, I cherish. Full well I know that it recalls few memories to most of you. But it seems some tribute to the honored dead to invoke them as elder brethren of the distinguished men assembled here to-night.



**ABBOTT, BENJAMIN VAUGHN** (born in Boston, June 4, 1830; died in Brooklyn, February 17, 1890), was a son of Jacob Abbott, author of the *Rollo* books. He was graduated at the New York University in 1850, studied for a year at the Cambridge Law School, and was admitted to the bar in New York City in 1852. He entered upon the practice of the law in partnership with his younger brother, Austin.<sup>1</sup> After several years of practice he began to devote himself chiefly to legal writing. Alone or in collaboration with his brother he was the author or compiler of nearly one hundred law volumes.

As secretary of the New York code commission he personally drafted the report of a penal code, which was submitted to the legislature in 1865, and became the basis of the present code. In June, 1870, he was appointed by President Grant one of three commissioners to revise the statutes of the United States. This work, prosecuted for three years, resulted in the consolidation of sixteen volumes of federal laws into one large octavo volume. In continuation of his labors in this field he devoted six years to the preparation of a new edition of the "United States Digest" (1879), reducing the original digest to thirteen volumes, to which he added nine annual supplements. He also compiled a "National Digest" in five volumes, containing all the important acts of congress, decisions of the United States Supreme Court, Circuit and District Courts, Court of Claims, etc., from the foundation of the government to December, 1888.

Among his other important works are "A Digest of Decisions on Corporations from 1860 to 1870" (1872), "A Treatise on the Courts of the United States and their Practice" (1877), a "Dictionary of Terms in American and English Jurisprudence" (1879), and "Judge and Jury" (1880), a collection of miscellaneous articles. He was a frequent writer for the press and the periodicals, contributed many articles to the "Medical Reference Handbook," and served as editor for the Lawyers' Co-operative Publishing Company of Rochester.

His contributions to legal literature belong in the first rank of such works. His digests and compilations are uniformly distinguished by a methodical arrangement and a system of analysis which have done much to simplify federal and state law.

<sup>1</sup> See Vol. ii.



ALEXANDER, JAMES (born in Scotland about 1690; died in New York, April 2, 1756), was one of the most eminent leaders of the New York colonial bar. He fled to America in 1716, being compelled to leave England on account of his participation in the Stuart cause. He was the first official recorder of the town of Perth Amboy, New Jersey (1718), and having served as an officer of engineers in Scotland was appointed surveyor-general of New York and New Jersey. He studied law in his intervals of leisure. He was counsel in many important cases, notably the famous case of Peter Zenger, publisher of the *New York Weekly Journal*, which, resulting finally in the discharge of Zenger, established for all time the principle of the liberty of the press in America. In consequence of the bold stand that he took in that case as one of Zenger's counsel, contending that the court before which the accused was brought was not a legally constituted tribunal, his name was stricken from the roll of practicing lawyers for contempt of court, but he was subsequently reinstated.<sup>1</sup>



*James Alexander*

He was for many years prominent in the government of the colony, serving in the colonial legislature and council as attorney-general (1721-23) and as secretary of the province. He was one of the principal regular contributors to Zenger's *Weekly Journal*. He maintained a correspondence with Halley, royal astronomer at Greenwich, and other learned mathematicians, and co-operated with Franklin and others in founding the American Philosophical Society. John Tabor Kempe, William Smith, Jr., James Duane and Peter R. Livingston were law students at the same time in his office. He acquired great wealth and left a large estate. He resigned his claim to the earldom of Stirling to his son William (the celebrated Lord Stirling of the Revolution), who prosecuted it without success. Politically he belonged to the whig faction of the colony. His death resulted from a severe illness occasioned by the fatigue and exposure of a trip that he made to Albany to oppose a ministerial scheme inimical to the rights of the colony.

<sup>1</sup> See pp. 66-68 of this volume.

THE

## New - York Weekly JOURNAL.

*Containing the freshest Advices, Foreign, and Domestic.*

MUNDAY January 27th, 1734.

*Fustum et tenacem propositi Virum,  
Non civium Ardor prava iuventium,  
Non Vultus instantis Tyranni,  
Mente quatit solida.*

Hor.



THE first essential Ingredient Necessary to form a Patriot, is Impartiality; for if a Person shall think himself bound by any other Rules but those of his own Reason and Judgment, or obliged to follow the Dictates of others, who shall appear the Heads of the Party he is engaged in, he sinks below the Dignity of a Humane Creature, and voluntarily resigns those Guides which Nature has given him, to direct him in all Spheres of Life.

The Coldness, and sometimes Diffidence, which a Man governed thus by the Principles of Honour generally meets with on such Occasions from the Friends he has ever acted in Concert with, for the former Part of his Life, are Considerations which but too often subdue the best inclined Spirits, and prevail with them to be passive and obedient, rather than active and resolute: But if such Persons could but once feel the Comfort and Pleasure of having done their Duty, they would meet with a sufficient Reward within themselves, to overbalance the Loss of their Friends, or the Malice of their Enemies.

Ambition and Avarice are two Vices, which are directly opposite to the Character of a Patriot, for tho' an Increase of Power, or of Riches, may be the proper Reward of Honour and Merit, and the most honest Statesman may, with Justice accept of either; yet when the Mind is infected with a Thirst after them, all Notions of Truth, Principle and Independency are Lost in such Minds, and, by growing Slaves to their own Passions, they become Naturally subservient to those who can indulge and gratify them.

In public Affairs it is the Duty of every Man to be free from personal Prejudices; neither ought we to oppose any Step that is taking for the Good of our Country, purely because those that are the Contrivers and Advisers of it, are Obnoxious to us. There are but too many Precedents of this Nature, when Men have cast the most black Colours on the Wisdom of Administrations, because those that had the Direction of Affairs were their Enemies in private Life; and this ill Way of Judging may be attended with dangerous Consequences to the common Weal.

Intrepidity and Firmness are two Virtues which every Patriot must be Master of, or else all the other Talents he is possessed of are useless and barren.

Whoever, therefore, when he has formed a Judgment on any Subject relating





ALLEN, HENRY WILDER (born at Alfred, Maine, October 18, 1833; died in New York, October 14, 1891), was the son of Honorable William Cutter Allen, for many years judge of probate for York county, Maine. He was educated at Dartmouth College, graduating in the class of 1856. He began his preparation for the bar in the office of Seth J. Thomas in Boston, and, coming to New York, finished his studies under Honorable Charles A. Rapallo, being admitted to practice in 1858. He was chief clerk of the district attorney's office during the administration of Nelson J. Waterbury, and subsequently became Judge Waterbury's partner. In 1867 he was appointed a register in bankruptcy by Chief-Justice Chase, a position which he held for fourteen years. Governor Cleveland appointed him in 1884 judge of the Court of Common Pleas to fill a vacancy, and in the fall of that year he was elected for a full term.

Judge Allen was highly popular with the profession, and was much beloved in the social relations of life. He was a democrat in politics, and served for a long period of years as one of the governors and the secretary of the Manhattan Club.



ALLEN, WILLIAM F., was born in Windham county, Connecticut, July 28, 1808, and died at Oswego, New York, June 3, 1878. He was admitted to the bar at an early age, and came to New York state to practice his profession, rapidly advancing to an eminent position at the bar. At the age of forty he was elected a judge of the Supreme Court for the 5th judicial district, and upon the expiration of his term of eight years he was re-elected. In 1863 he removed to New York City, where for several years he was engaged in private practice. In November, 1867, he was elected controller of the state on the democratic ticket. His administration of the office was signalized by a marked reduction in the state debt. In his annual reports to the legislature he dwelt upon the excessive cost to the state of maintaining the canals and prisons—abuses which have since been righted. While still occupying the position of controller he was elected to the bench of the Court of Appeals. He served in that office from 1871 until his death.

He ranks among the very able judges of the higher courts of the state, and the many learned opinions which he wrote enjoy high repute for authority.



ANGEL, WILLIAM G. (born on Block Island, July 17, 1790; died at Angelica, New York, August 13, 1858), was descended from an old American family, whose first ancestor emigrated from Warwick, England, early in the seventeenth century. He was reared on a farm, and was almost wholly deprived of educa-



tional opportunities. Ambitious for knowledge, however, he educated himself by the help of such books as he could procure, and, resolving to fit himself for the legal profession, he entered the office of William Dowse, a lawyer in Cooperstown, New York, afterward continuing his studies in the office of Colonel Farrand Stranahan of the same place. By severe efforts and rigid economy he managed to support himself during his long period of preparation for the bar. It was not until 1817, at the age of twenty-seven, that he was admitted. He became one of the leaders of the Otsego county bar. In 1821 he was chosen surrogate of the county, and he represented the district in congress from 1824 to 1832. In 1833 he removed to Hammondsport and formed a copartnership with Honorable Morris Brown. This lasted until 1835, when the firm of Angel & Grover was established, the junior member being Martin Grover, afterward the distinguished judge of the Court of Appeals, who had received his legal training in Mr. Angel's office. He was a member of the constitutional convention of 1846. He was elected judge of Allegany county in 1846, and served for four and one-half years, when he retired.



ANTHON, JOHN (born in Detroit, Michigan, May 14, 1794; died in New York City, March 5, 1863), was the second son of Doctor G. C. Anthon and a brother of the distinguished Doctor Charles Anthon, the classical writer. He was graduated at Columbia College at the early age of seventeen with the highest honors of his class, studied law, and upon attaining his majority was admitted to practice in the Supreme Court. He became one of the foremost lawyers of his day. During the war of 1812 he was frequently employed as judge advocate. He was in command of a company of militia and served in the defence of New York City during that conflict. As one of the most prominent lawyers practicing in the Mayor's Court, he drew the act which was passed in 1821 by the legislature changing the name of that court to the Court of Common Pleas for the County and City of New York, and creating a first judge to hold office during good behavior or until he should reach the age of sixty years. Under this act the name, which had been retained for one hundred and fifty-six years, denoting the municipal origin of the court, was abandoned and a permanent law judge appointed in the nominal place of the mayor, who had long since ceased to preside.

Mr. Anthon for years afterward was one of the leading practitioners before this court. He was one of the founders of the New York Law Institute and was its president at the time of his death. He was a thorough student of the law and wrote several treatises. He published "Anthon's Law Student" and "American Precedents" (1810), "Digested Index to the Reports of the United States Courts" (1813), "Re-

prints of Cases at *Nisi Prius* in the New York Supreme Court " (1820), and "An Analytical Abridgment of Blackstone's Commentaries," with a prefatory essay "On the Study of Law" (2d ed., 1832).

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ANTHON, WILLIAM HENRY (born in New York City, August 2, 1827; died there November 7, 1875), was a son of John Anthon. He studied law under his father's direction and was admitted to the bar in 1848. He was a member of the state legislature and served on Governor Morgan's staff as judge advocate during the war. He was prominent as a practitioner. He was connected with a number of celebrated cases, notably the Brinckly divorce case and the trial of the rioters who burned the quarantine buildings on Staten Island in 1858. In this trial he was the counsel for the rioters.

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ARTHUR, CHESTER ALAN, twenty-first president of the United States (born in Fairfield, Franklin county, Vermont, October 5, 1830; died in New York City, November 18, 1886), was the eldest son of Reverend William Arthur and Melvina Stone. His father was born in Antrim, Ireland, in 1796, was graduated at Belfast College, came to America, studied law, was then called to the Baptist ministry, and was finally settled as pastor of the Calvary Baptist Church of Albany, New York. He removed to Schenectady, published a magazine, the *Antiquarian*, and an "Etymological Dictionary of Family and Christian Names." He was learned in the classics and history, and gave the latter years of his life to literary pursuits. He died in Newtonville, near Albany, October 27, 1875. Mr. Arthur's maternal ancestor, Uriah Stone, was a New Hampshire pioneer, who migrated from Hampstead to the Connecticut River in 1763.

Chester A. Arthur was graduated from Union College in 1848 at eighteen years of age. Deciding while in college to pursue the law, he attended a law school at Ballston Spa and for a brief period continued his legal studies at Lansingburg, where his father then resided. In 1851 he was principal of an academy at North Pownal, Bennington county, Vermont, where in 1854 James A. Garfield, then a student in Williams College, taught penmanship during the winter vacation. In 1853 he entered the law office of Erastus D. Culver, New York City, as a student, and in the same year he was admitted to the bar and became a member of the firm of Culver, Parker & Arthur. From the beginning he was successful in his profession, and before he reached the age of twenty-five he was connected as counsel with two cases of great public interest and consequence, involving the rights of the negro. The first of these was the notable Lemmon case. Jonathan Lemmon, a slaveholder, in 1852 brought to New York from Virginia eight of his slaves, designing

to ship them by rail to Texas. A writ of habeas corpus was obtained from the Superior Court of the City of New York, in consequence of which the slaves were released on the ground that they had become free men by being brought by their master into a free state. Mr. Arthur, at that time still a student, took a decided interest in behalf of the slaves, having from his early associations formed strong anti-slavery convictions. In the resulting litigation he was one of the counsel for the negroes in association with Ogden Hoffman, E. D. Culver, Joseph Blunt, William M. Evarts, and the attorney-general—the chief counsel for the slaveholder being Charles O'Connor. The other case, equally important and celebrated, was that of Lizzie Jennings against the Fourth Avenue Railroad (1855), in which the right of colored persons to ride in the street cars of New York was established.

Mr. Arthur's political activities and public services of course are the distinctive phases of his life, yet for nearly twenty years after his admission to the bar his professional career was interrupted by only a brief period of official service, and he is well entitled to remembrance among the eminent and able members of the bar of the past.

His first vote was cast for Winfield Scott, the whig candidate for president in 1852, and he was one of the organizers of the republican party in the state. In 1861 Governor Morgan appointed him to a place on his staff as engineer-in-chief with the rank of brigadier-general, and in April of that year, at the breaking out of the war, he became acting quartermaster-general with headquarters in New York City. In this position it was his duty to prepare and forward the New York state troops, and he rendered invaluable services. He went out of office on December 31, 1862, with the expiration of Governor Morgan's term.

He now formed a legal copartnership with Henry G. Gardner, which lasted until 1867. After the dissolution of the firm he practiced independently for five years. During this time he was for a while counsel for the New York City department of assessments and taxes. In December, 1871, President Grant appointed him collector of the port of New York. Soon after accepting this office he organized (January 1, 1872) the law firm of Arthur, Phelps & Knevals. He continued to serve as collector of the port until July 11, 1878, when he was suspended by President Hayes, who, being in sympathy with the anti-Conkling faction of the New York republicans, had resolved upon Mr. Arthur's removal as a stroke of policy. Upon leaving the collector's office he returned to the practice of the law, his firm now being styled Arthur, Phelps, Knevals & Ransom.

Mr. Arthur's subsequent career is a part of the history of the nation, and it does not come within the scope of this article to review it with any degree of formality. At the national republican convention of 1880 he co-operated heartily with Senator Conkling in the endeavor to nominate General Grant for a third term. The selection of Garfield as a compromise candidate was followed by the choice of Mr. Arthur

for the vice-presidency, as a concession to the Grant Conkling element of the party. Garfield and Arthur were elected (carrying New York state by 21,000), and on March 4, 1881, they were sworn into office. In the memorable controversy between President Garfield and the New York senators on the question of patronage Vice-President Arthur sided with Senators Conkling and Platt. But after the tragedy of July 2, 1881, this factional strife came suddenly to an end, and the dignified and patriotic bearing of the vice-president during the period of suspense which followed went far toward reassuring those who at first were disposed to regard the possibility of his accession to the presidency with grave apprehension. General Garfield died of his wound on September 19, and the next day Mr. Arthur, at his residence in New York, 123 Lexington avenue, was sworn in as president before Judge John R. Brady, of the New York Supreme Court. Returning to Washington he again, on the 22d, took the oath before Chief-Justice Waite, delivering a brief inaugural address, which was admirable both for its spirit and its terms.

President Arthur's administration was of a conservative character, and, on the whole, met the best expectations of the country. In the national republican convention of 1884 his name was presented for the presidential nomination, and he received 278 votes on the first ballot, but Mr. Blaine was chosen as the candidate of the party. At the close of his term, March 5, 1885, he retired to private life. He died suddenly from apoplexy at his home in New York, November 18, 1886.

Mr. Arthur was one of the earliest members of the Association of the Bar of the City of New York.



ATTWOOD, WILLIAM, the third chief-justice of the state and the first to receive his commission and salary directly from the crown, was a son of John Attwood of Bloomfield, in Essex, England. The date of his birth is not known. He was called to the bar in 1674, and was admitted a fellow of Grey's Inn. He is said to have been "a very considerable man in his profession in London," and was known in Westminster Hall and at the bar of the House of Lords. He was a voluminous author on historical and theological subjects. He wrote an extensive treatise entitled "The Fundamental Constitution of the English Government, proving King William and Queen Mary our lawful King and Queen." Another of his works, "The Superiority and Direct Dominion of the Crown of England over the Crown and Kingdom of Scotland," gave great offence in Scotland and was burned by the common hangman, by order of the Scottish parliament.

The lords of trade, having been petitioned by the colonial governor of New York—Bellomont—to strengthen the judiciary by the



appointment of a chief-justice with sufficient legal training to administer and enforce the law, sent over Attwood in the summer of 1701.



LORD BELLOMONT.  
Governor of New York, 1698-1701.

In addition to his functions as chief-justice, he was a member of the council and a judge in admiralty with jurisdiction embracing the New England colonies, New York, New Jersey, and Pennsylvania. The colony was at that period agitated by the quarrels of the Leislerian and Bayard factions. Chief-Justice Attwood was in sympathy with the Leislerians, and in the trial of Bayard and Hutchins for treason his bias and arbitrary acts caused much dissatisfaction. After the arrival of Governor Cornbury he was accused of corruptly perverting justice in cases before him in which his son was counsel.<sup>1</sup> He was sus-

pended from office, and, apprehensive of arrest, crossed to New Jersey in the night time and, adopting the name of Jones, travelled to Virginia, whence he sailed for England. He wrote pamphlets justifying his course, and sought reinstatement, but without success. He died in England about 1709.<sup>2</sup>



ACON, EZEKIEL (born in Boston, Massachusetts, September 1, 1776; died in Utica, New York, October 18, 1870), was graduated at Yale College in 1794 and was prepared for the law in the Litchfield (Connecticut) law school. He first practiced in Stockbridge, Massachusetts, and for twenty years remained a member of the Massachusetts bar. In 1806 and 1807 he was a member of the state legislature, from 1807 to 1813 a member of congress, from 1813 to 1815 chief-justice of the Court of Common Pleas for the western district of Massachusetts, and in 1815 was appointed 1st comptroller of the treasury of the United States. In the same year he removed to Utica, New York. In this state he was eminent at the bar, serving in the legislature, as judge of the Court of Common Pleas, and as a member of the constitutional convention of 1821. He ran for congress on the democratic ticket in 1824, but was not elected. In 1843 he published an autobiographical work, "Recollections of Fifty Years."

<sup>1</sup> In a letter to the home government, Cornbury wrote:

"Attwood, in the execution of his office, as chief-justice and judge, in almost all cases that came judicially before him, by the general report of all present, did, openly, notoriously and most scandalously, and with wonderful partiality, in almost all cases in which his son was concerned as counsel, espouse, and, indeed, pleaded and gave countenance to such causes, and

finally gave judgment on ye (son's) side; by means of which justice was perverted, ye laws abused, and ye subjects exceedingly injured; which recommended his son to great practice, and large sums of money was by parties given to him, to buy his father's favor."

<sup>2</sup> For a history of Attwood's career and the Bayard trial, see Honorable Charles P. Daly's articles in the *Green Bag* for March, April and May, 1895.





**BALDWIN, JOHN** (born at Lebanon, Connecticut; died at Almond, New York, in 1843), was one of the most prominent western New York practitioners of his time. He received a good education and inherited a comfortable fortune from his father's estate. Desiring to fit himself for the law, he entered the office of Samuel Miles Hopkins, at Moscow, Livingston county, New York. Upon his admission to the bar he commenced practice at Moscow. Soon afterward, through the business failure of a brother whose paper he had endorsed, his entire property was swept away. Devoting himself energetically to his profession, he rapidly made a reputation which yielded him very substantial rewards. Removing to Dansville, his practice gradually extended through the counties of Allegany, Livingston and Steuben. In 1835 he formed a copartnership with Honorable William M. Hawley at Hornellsville. This association was dissolved in a few years, and afterward Mr. Baldwin practiced alone. He was noted for wit and cleverness in repartee, and also for personal peculiarities which sometimes had rather eccentric manifestations.<sup>1</sup>



**BANGS, FRANCIS NEHEMIAH** (born in New York City, February 23, 1828; died in Ocala, Florida, November 30, 1885), was descended from a puritan ancestry. His father was Reverend Nathan Bangs, a distinguished clergyman of the Methodist denomination and writer on religious subjects. Francis N. Bangs attended the Wesleyan University at Middletown, Connecticut, and the University of the City of New York, graduating in 1845. He studied law at Yale, and in 1850 was admitted to the bar in New York. His first legal copartnership was with John Sedgwick, afterward chief-justice of the Superior Court. Among the other prominent members of the New York bar with whom he was associated at various times were George Buckham, Joshua M. Van Cott, Thomas M. North, C. W. Bangs and Francis L. Stetson. His firm at the time of his death, Bangs & Stetson, was universally known as one of the foremost law firms of the country.

Mr. Bangs quickly attained an eminent position in his profession, applying himself especially to bankruptcy law and railway and corporation business. As attorney and counsel for the assignee of Ketchum, Son & Co., a firm which had conducted a most extensive business in stocks and securities, he performed his duties with such fidelity and ability that ever afterward his services were in constant request in litigations involving great interests. Among the cases in which he was counsel were the Cesnola and Havemeyer estate suits, and those resulting from the Grant & Ward failure. He was an indefatigable worker, frequently devoting fifteen hours a day, for days

<sup>1</sup> For an entertaining sketch of Mr. Baldwin, see Proctor's "Bench and Bar of New York."

in succession, to a single task, and his death at a comparatively early age was ascribed to overwork.

Mr. Bangs had no ambitions except in the line of his profession, and he never held public office or participated actively in politics. But he co-operated heartily in matters of public concern that engaged his interest as a citizen. A republican in politics, he was one of the founders of the Union League Club. He was also an original member of the Association of the Bar, and was one of the leaders in the movement for the impeachment of the "ring" judges, Barnard, Cardozo and McCunn. He was president of the Bar Association in 1882 and 1883.

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BARBOUR, JOHN MERRITT (born in Cambridge, Washington county, New York, September 5, 1807; died in New York City, December 8, 1881), was admitted to the bar in Chautauqua county, and soon afterward went to Michigan, remaining there until 1848. He was elected a justice of the peace, was appointed by the governor (1837) a commissioner to devise and put into operation a system of internal improvements, and served for eight years as a county judge. Soon after his return to New York he was appointed to a position in the office of the solicitor of the treasury at Washington. Removing to New York City in 1850 he applied himself earnestly to his profession, and gradually advanced to prominence. He was elected associate-justice of the Superior Court in 1861 and re-elected in 1867. He succeeded to the office of chief-justice of the court upon the death of Chief-Justice Robertson. After his retirement from the bench he was frequently selected as referee in cases of marked importance and interest, and he occasionally appeared as counsel in suits involving constitutional questions or matters of considerable intricacy. One of the suits prosecuted by Judge Barbour in his latter years, *Dodge vs. the County of Platte in the State of Missouri* (82 N. Y., 218), resulted in a memorable triumph. As counsel for the defence he carried the case to the Court of Appeals, which, on the strength of his argument, reversed the decision that had been rendered by the general term of the Superior Court, at that time composed of judges of conspicuous ability and learning.


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BARBOUR, OLIVER L. (born in Cambridge, Washington county, New York, in June, 1811; died in Saratoga, New York, December 17, 1890), was graduated from Fredonia Academy in 1827, studied law and was admitted to the bar in 1832. From 1847 to 1849 he was reporter of the New York Court of Chancery, and from 1848 to 1876 of the Supreme Court. Beside his numerous volumes of reports, which have made his name a familiar one

to lawyers and are admirable examples of conscientious work, he was the author of a number of legal books and treatises.


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ARKER, GEORGE PAYSON (born in Rindge, New Hampshire, October 25, 1807; died in Buffalo, January 27, 1848), was educated at Amherst and Union colleges, graduating from the latter in 1827. While attending Union College he studied law in the office of Alonzo C. Paige, author of Paige's Chancery Reports. After his graduation he removed to Buffalo and entered the office of Stephen G. Austen. Upon his admission to the bar in 1830 he became Mr. Austen's partner. In 1835 he associated himself with John T. Hudson, and in 1837 he organized the law firm of Barker, Hawley & Sill, with Seth C. Hawley and Seth E. Sill, which in 1839, by the retirement of Mr. Hawley, became Barker & Sill. Mr. Barker enjoyed a high reputation at the bar of western New York, and his career gave promise of great distinction when it was suddenly cut short by death. He was active in politics as a democratic orator and leader. He served in the assembly in 1836, was nominated for congress in 1837 but declined, was a candidate for mayor of Buffalo in 1840, being defeated by only ten votes, and was chosen attorney-general of the state in 1843. As a lawyer his strength was mainly as an advocate before a jury.

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ARLOW, S. L. M. (born in Granville, Massachusetts, in 1829; died in Glen Cove, Long Island, July 10, 1889), was one of the leading railroad lawyers of New York. The firm of Bowdoin, Larocque & Barlow was formed in 1852. Afterward Judge Shipman and Judge Choate joined it. Mr. Barlow took an active and memorable part in the litigation over the Erie road as counsel for the corporation, and it was said that his conduct of the case cost Jay Gould some nine millions of dollars. His own fees in the case aggregated \$250,000. He collected a very valuable library of early American history, and was a writer on historical and other subjects. With Henry Harrison he edited "Notes on Columbus."

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ARNARD, DANIEL DEWEY (born in Sheffield, Massachusetts, July 16, 1797; died in Albany, New York, April 24 1861), was graduated at Williams College in 1818 and admitted to the bar in 1821. He established himself in Rochester, and was elected district-attorney of Monroe county in 1826 and a member of congress in 1827. Removing to Albany he served in the state legislature, and was again sent to congress (1839-45). He represented the United States as minister to Prussia from 1850 to 1853. He was an able speaker and writer on the questions of the times.



**B**EACH, WILLIAM AUGUSTUS (born in Saratoga Springs, New York, December 9, 1809; died in Tarrytown, New York, June 28, 1884), was the son of Miles Beach, a prominent and wealthy merchant of Saratoga, and Cynthia Warren, sister of Judge Warren, a woman of rare intellectual endowments. He attended Partridge's military school at Norwich, Vermont; his scholastic training was limited to the education he received at that institution. He entered upon the study of the law in the office of his uncle, Judge Warren, and was admitted to the bar at Saratoga in August, 1833. Gifted with remarkable oratorical abilities, he immediately sprang into prominence as a jury pleader, and, possessing also the substantial qualities of thoroughness and conscientious attention to detail in the preparation and prosecution of his cases, his reputation as one of the most consummate lawyers of the day steadily grew. He was elected district-attorney of Saratoga county in 1843 and continued in that position until 1847. He never afterward held public office. About 1851 he removed to Troy, where he remained until 1870. Here he was associated with Job Pierson and Levi Smith in the firm of Pierson, Beach & Smith, which after the death of Mr. Pierson was changed to Beach & Smith. In Troy he was retained by the prominent railroad corporations having interests in that city. He was the leading counsel for the plaintiff in the celebrated Albany bridge case, brought to prevent the construction of a bridge over the Hudson river. He appeared in almost every important jury case tried during his residence in Troy; defended Canal Commissioner Dorn and secured his acquittal; was associated with James T. Brady in the defence of General Cole, charged with the murder of L. Harris Hitchcock; at the request of Governor Seymour defended Colonel North, charged before a military tribunal at Washington with frauds in connection with the forwarding of the votes of the soldiers of the State of New York in the presidential election of 1864, and was one of the counsel for Commodore Vanderbilt in the famous "Five Million suit."

In 1870 Mr. Beach, at the solicitation of Honorable Charles A. Rapallo, went to New York to take the place in the latter's law firm made vacant by his election to the bench of the Court of Appeals. The reorganized firm received the name of Beach & Brown. Associated with Mr. Beach were his son, Miles Beach, and Augustus C. Brown. In the metropolis he was engaged in many of the great cases tried from 1870 until his death. He continued and completed the railway litigations of Commodore Vanderbilt; was counsel for W. H. Vanderbilt in the will contest; represented the plaintiff in the Brinkly divorce case; was the leading counsel of Judge Barnard in the impeachment proceedings brought against him; was associated with Judge Fullerton in the defence of Edward S. Stokes, charged with the murder of James Fisk; was the leading counsel for Theodore Tilton in his suit against Henry Ward Beecher; was the leading counsel for the executors of



Alexander T. Stewart, for the plaintiff in the Compton divorce case and for the plaintiff in the Marie Garrison suit; and was associated with Charles O'Connor in the defence of Frank Walworth, tried for the murder of his father.

Mr. Beach, although a democrat, never took any part in politics and even refused to make political speeches. His entire energies were devoted to the active practice of the law. He was very careless of his posthumous reputation, never writing out his speeches. His eminence was essentially as a jury lawyer, combining in a remarkable manner all the qualities requisite for success in that field. Yet to his brilliancy he added the solid virtues, and he was highly effective also in the argument of questions of law before the appellate tribunals.



**B**AYARD, NICHOLAS (born in Alphen, Holland, about 1644; died in New York City in 1707), was a nephew of Governor Stuyvesant, and was brought to America by his widowed mother (Stuyvesant's sister) in 1647. His father, Samuel Bayard, fled from France to escape religious persecution, and died in Holland. His mother, who was an accomplished woman, gave him a good education. He was made clerk of the common council in 1664, and afterward was Stuyvesant's secretary and surveyor of the province. He filled the office of secretary of the province under the Dutch government after 1672. In 1685, under the administration of the English governor Dongan, he was mayor of New York. He possessed legal knowledge, and the Dongan charter was framed by him. He took a leading part in the opposition to the Leisler faction, and was instrumental in procuring the adoption of a law (1691) defining it as treason for a person to endeavor by force of arms "or otherwise" to disturb the peace, good, and quiet of the king's government. He consequently incurred the bitter enmity of the Leislerians, and later was arraigned for high treason under this very act. Chief-Justice Attwood, before whom he was tried, was in accord with the Leisler party, and sentenced him to death, but a change in the administration of the colony saved his life and caused Attwood to flee. The judicial proceedings by which he had been condemned were annulled, and his property and dignities were restored to him.<sup>1</sup>



BAYARD ARMS.



**B**EARDSLEY, LEVI (born in Hoosic, Rensselaer county, New York, November 13, 1785; died in New York, March 19, 1857), was a grandnephew of Reverend John Beardsley, a prominent loyalist of the Revolution. He was admitted to the bar in 1812. He was a member of the assembly in 1825, which

<sup>1</sup> See pp. 81-82 of this volume.

passed the first railway charter in the United States, and was chosen to the state senate in 1829 and 1834, becoming its president in 1838. As a state legislator he favored liberal measures. He served for a long period as judge of the Court of Errors of New York. He published his legal opinions and a volume of "Reminiscences" (New York, 1852).



**BEARDSLEY, SAMUEL** (born in Hoosic, Rensselaer county, New York, February 6, 1790; died in Utica, May 7, 1860), a brother of the preceding, was a farmer's son, and was brought up in Otsego county. By self study and wide reading he overcame the disadvantages of very limited educational opportunities. He taught school, and, desiring to enter the medical profession, commenced its study with Doctor White in Cooperstown. Here his attention was soon attracted to the contests in the legal forum, and he decided to adopt the profession of the law, placing himself, at the age of eighteen, under the direction of Joseph Hathaway at Rome. In 1813 he enlisted in the army, in which he served for a year, advancing to the rank of lieutenant. At the expiration of his term of enlistment he resumed his studies, and in 1815 was admitted to the bar at Albany and soon after engaged in practice as a partner of his preceptor. He at once displayed exceptional qualities of energy and ability, and advanced with rapidity to prominence. In 1821 he was appointed district attorney of Oneida county, and he retained that office until 1823, when he was succeeded by Hiram Denio, afterward judge of the Court of Appeals. Meantime (1822) he was elected to the state senate, and although he was the youngest member of that body he took a leading part in its deliberations, greatly distinguishing himself. While yet in the senate he was appointed by President John Quincy Adams United States district attorney for the northern district of New York. He remained in that position until 1830, when he was elected a representative in congress. He was twice successively re-elected. In the house he was one of the most conspicuous men of the day, served on the judiciary committee, and was an uncompromising and effective supporter of President Jackson, delivering a very notable speech on the currency question during the United States Bank excitement. In 1834 Governor Marcy appointed him judge of the 5th New York circuit, and the appointment was confirmed by the state senate, but, at the personal solicitation of the president, he declined the place and continued in the house of representatives. In 1836 he was appointed attorney-general of the state to succeed Greene C. Bronson. He returned to his legal practice at the end of his term in 1838. Again chosen to congress in 1842 he resigned in 1844 upon being elevated by Governor Wright to the bench of the Supreme Court as successor to Judge Esek Cowen. He occupied that seat until the old Supreme Court, under the operation of the new constitution, passed out of

existence, and upon the retirement of Chief-Justice Bronson in 1847 he succeeded to his office, filling the chief-justiceship until January 1, 1848. Thus he was the last chief-justice of the state in the distinguished line which began with the selection of John Jay, May 8, 1777. After leaving the bench Judge Beardsley resumed the private practice of the profession, in which he continued uninterruptedly until his death. During this period of twelve years he acted as counsel in many of the most important cases in the Court of Appeals. He still retained his interest and influence in politics, and in the democratic national convention of 1856 was instrumental in bringing about the nomination of Buchanan for the presidency.

Although Judge Beardsley's career on the bench was comparatively brief, and his life was largely devoted to political affairs and the routine duties of public prosecutor, he ranks with the most celebrated of New York jurists. Judge Rufus W. Peckham said of him :

Judge Beardsley knew men and the springs of human action ; he was able to inspire them with a portion of the same spirit that fired his own bosom. He had really more of the General Jackson in him than any of the public men that survived the old hero. Eminent as he was in ability, he was not less distinguished for the high-toned manly integrity that characterized every act of his life. . . . The late Joshua A. Spencer, who had practiced law in the same town with him for a quarter of a century, in alluding to the chivalrous integrity of Judge Beardsley, observed to me that he never felt called upon to examine with much care bills of exception or amendment from him, as he knew they were always prepared with a scrupulous regard for the truth of the case, as it occurred on the trial.



**BEEBE, WILLIAM R.** (born in Chatham, Columbia county, New York, in 1816 ; killed on the railroad at Evona, New Jersey, May 22, 1884), studied law in the office of Burr & Benedict, New York City, and became a partner in that firm upon his admission to the bar. In 1845 he formed a business association with Charles Donohue. The firm was styled, successively, Beebe, Donohue & Cochran, Beebe, Donohue & Betts, and Beebe, Dean & Donohue. Mr. Beebe was the first person to hold office as city judge after the creation of the court in 1850, and the first city judge elected to the Court of Sessions. He was on the bench for four years from 1851. Retiring, he devoted himself for the rest of his life almost exclusively to admiralty cases.



**BENEDICT, ERASTUS CORNELIUS** (born in Branford, Connecticut, March 19, 1800 ; died in New York City, October 22, 1880), was the son of Reverend Joel T. Benedict, who, coming to New York from Connecticut, filled pastorates at New Windsor, Franklin and Chatham. Erastus, graduating at Williams College in 1821, was engaged in educational work for three years after,

meantime studying law. He was admitted to the bar in 1824, and soon after was appointed to a deputy clerkship in the United States District Court for southern New York. In this position he became especially interested in admiralty law, which led him, after engaging in active practice, to give his attention mainly to that branch of his profession; and throughout his life he stood at the front rank of admiralty lawyers. His firm, originally Burr & Benedict, afterward Burr, Benedict & Beebe, early took a leading place among the law firms of the city.

Mr. Benedict's career was active and useful in varied respects. He delivered many addresses on scientific and historical subjects, and published, among other writings, "American Admiralty" (1850), "A Run through Europe" (1860), and "The Hymn of Hildebert and Other Mediæval Hymns" (1861). He was for thirteen years a member of the board of education, and its president until his resignation in 1863; served in the assembly in 1848 and 1864, and in the senate in 1872; was a trustee of Williams College and regent of the University of the State of New York, becoming chancellor of the latter institution in 1878; was governor of the New York State Woman's Hospital from its incorporation and took a warm interest in charitable work; and was a prominent member of the New York Historical Society and the Union League Club.



ENSON, EGBERT (born in New York City, June 21, 1746; died in Jamaica, Long Island, August 24, 1833), was an active patriot of the Revolution and one of the most eminent American jurists of his time, distinguished equally for eloquence at the bar and for legal learning. He was graduated at Kings College in 1765 and soon became prominent in public affairs. He was a member of the revolutionary committee of public safety, and upon the organization of the state government in 1777 was chosen the first attorney-general (serving until 1789), and was elected the same year to the first state legislature. He was one of the foremost champions of the federal constitution, and led the legislature in 1788 in the advocacy of its acceptance. He was a member of the continental congress from 1784 to 1788 and took an active part in the deliberations of the 1st and 2d congresses of the United States. From 1794 to 1802 he was judge of the Supreme Court of the State of New York, and subsequently for a time sat on the federal bench as a circuit judge. He was a regent of the New York University from 1789 to 1802, and in 1808 he received the degree of LL.D. from Harvard and in 1811 from Dartmouth. In 1813 he was again elected to congress, retiring in 1815. He was the first president of the New York Historical Society. As an author, he wrote "Vindication of the Captors of Major Andre" (1817), and "Memoir on Dutch Names of Places" (1835).





ETTS, SAMUEL ROSSITER. See Vol. ii.



ETTS, WILLIAM (born in Bechsgrove, St. Croix, West Indies, January 28, 1802; died in Jamaica, Long Island, July 5, 1884), was graduated from Columbia College in 1820, and studied law with David B. Ogden and afterward with his father-in-law, Beverley Robinson. He was a trustee of Columbia College and of the College of Physicians and Surgeons; was a professor of law in Columbia (1848-54), and served some of the old and large corporations of New York as their counsel.



IDWELL, MARSHALL S., was born in New England in 1798 and died in New York City, October 24, 1872. His early life was spent in Canada, where, while still a young man, he had not only won prominence in the profession of the law, but had entered political life and gained distinction in the Canadian parliament. He was returned several times from Kingston and Toronto, and for two terms was speaker of the house. His attitude as leader of the liberal party became so pronounced during the rebellion of 1837 that the government ordered him to leave Canada. Removing to New York City he renewed the practice of law, appearing almost exclusively in the higher courts, and he was soon recognized as among the ablest men at the bar. At the time of his death he was at the head of one of the oldest savings banks of the city, a director in the American Bible Society, and a prominent member of the New York Historical Society. One of the last addresses he made was before the latter society just previously to his death.



IRDSEYE, VICTORY (born in Cornwall, Connecticut, December 25, 1782; died in Pompey, New York, September 17, 1853), was the son of Reverend Nathan Birdseye, a prominent congregational divine, who lived to the remarkable age of one hundred and three and one-half years. He was graduated from Williams College in 1804, studied law with Gideon Tomlinson and Cornelius Allen, of Lansingburgh, New York, and was admitted as an attorney in 1807 and as counsel in 1810. He commenced practice in Pompey, New York. He held numerous public offices: was a justice of the peace for four years, commissioner of insolvency (1811), member of the 14th and 27th congresses, delegate to the constitutional convention of 1821, member of the assembly in 1823, 1838 and 1840, member of the state senate in 1827 and 1828, taking a prominent part

in the perfecting and enactment of the revised statutes, master of chancery from 1818 to 1822, and district-attorney of Onondaga county for about fifteen years from 1818. In 1830 he was a special counsel, in the place of John C. Spencer, resigned, to prosecute the persons accused of the abduction and murder of William Morgan. Of the four thousand judgments rendered by Mr. Birdseye as a justice of the peace, only four were subsequently reviewed in the higher courts, and all of these four were affirmed. It is also noteworthy that as district-attorney of Onondaga county for fifteen years he drafted and tried every indictment found, and not a single one of these indictments was quashed or found defective on demurrer.

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**BIRBY, JOHN MUNSON** (born in Fairfield, Connecticut, February, 1800; died in New York City, November 22, 1876), after receiving his preparation for the bar at Wilkesbarre, Pennsylvania, came to New York and was engaged in successful practice until 1849, when he retired. He invested at an early period in city real estate and left a fortune estimated at \$1,800,000. He married a cousin of Edgar Allan Poe, and was the author of two novels under the pseudonym of E. Grayson.

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**BLATCHFORD, RICHARD MILFORD** (born in Stratford, Connecticut, April 23, 1798; died in Newport, Rhode Island, September 3, 1875), was graduated at Union College in 1818, admitted to the bar, and entered upon professional practice in New York, where he made rapid progress to distinction. He became a specialist in banking law, and was successively financial agent and counsel for the Bank of England and the Bank of the United States, settling the affairs between the two institutions upon the expiration of the latter's charter in 1836. A personal friend of Daniel Webster, he was one of the executors of his will. For many years he was one of the very prominent and well-known citizens of New York. He was one of the leading members of the union defence committee at the outbreak of the war, and, by President Lincoln's appointment, was associated with John A. Dix and George Opdyke on the committee having in charge the disbursement of appropriations for obtaining soldiers for the army. He was minister-resident to the States of the Church in 1862 and 1863, commissioner of Central Park from 1859 to 1870, and afterward a member of the commission of public parks.

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**BLATCHFORD, SAMUEL** (born in New York City, March 9, 1820; died in Newport, Rhode Island, July 7, 1893), was a son of Honorable Richard M. Blatchford and Julia Ann Mumford, a noted belle in Knickerbocker society. Though his father was a man of wealth, he manifested from boyhood a strong pref-

erence for active pursuits, and throughout life he was a hard worker in his profession and in his judicial employments. He was graduated from Columbia College in 1837, and in 1839 became private secretary to Governor Seward. He was also military secretary on the governor's staff. During this period he studied law. He was admitted to the bar in 1842. In 1845, having been admitted a counsellor of the Supreme Court, he removed to Auburn and entered into copartnership with W. H. Seward and Christopher Morgan, almost immediately taking a high rank at the bar of the midland circuits. He manifested a lively interest in the exciting politics of the Tyler and Van Buren period, but having little inclination for active political pursuits he avoided joining his personal fortunes to party concerns. Desirous of enlarging his professional field he returned to New York City in 1854 and established, with Clarence A. Seward and Burr W. Griswold, the firm of Blatchford, Seward & Griswold, with which his father also was identified as the juriconsult of the office. This firm soon became conspicuous in commercial and legal circles, taking a leading place in practice before the United States District and Circuit courts. The experience thus obtained by Mr. Blatchford in the continuous exercise of professional duties of the first importance gave him a peculiar training for the judicial functions which he was destined to discharge with such distinguished ability.

In May, 1867, he was appointed district judge of the United States Court for the southern district of New York as successor to the renowned Samuel R. Betts. He fully maintained the standards of that court which had been established by his illustrious predecessor. In all the intricate departments of jurisprudence with which he had to deal—marine law, marine insurance, patent law, admiralty law, interstate law, etc.—his decisions enjoy the highest authority and display the most perfect understanding of the principles involved. From the District Court he was promoted in 1878 to be federal circuit judge, and in March, 1882, he was appointed by President Arthur associate-justice of the Supreme Court of the United States.

Judge Blatchford's career on the local federal bench won for him an enduring reputation as one of the greatest, if not the very greatest, of American admiralty judges. Among the celebrated arguments heard by him were those on the letters patent for insulating telegraph and cable wires with gutta-percha, and as to whether a common carrier knowingly carrying an infringing patent article for purposes of ultimate sale could be made liable as a wrong-doer. He settled the legal status of the proposed Brooklyn Bridge as a structure to be built over navigable waters. On the Supreme Court bench the most elaborate opinion rendered by him was in the case of the Pennsylvania Railroad Company *vs.* Miller, holding that the company was bound by a new provision of a new state constitution that imposed fresh burdens not contemplated by its charter, and that a company's right of exemption

from future legislation, in order to hold good, must be expressed in the original charter.

Judge Blatchford, during his long service on the bench in New York, enjoyed the highest respect, and indeed the affection, of the entire profession. He was sometimes called the Chesterfield of the bench, because of the exceeding grace and courtesy of his judicial bearing and his scrupulous observance of all the amenities.

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LEECKER, HARMANUS (born in Albany, New York, October 19, 1779; died there July 19, 1849), was admitted to the bar in his native city and for many years practiced law there in partnership with Theodore Sedgwick. He served in congress from 1811 to 1813 as a federalist and took a strong stand in opposition to the war of 1812. He was *chargé d'affaires* at the Hague from 1839 to 1842. He held the office of regent of the University of the State of New York from 1822 to 1834.

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BLUNT, JOSEPH (born in Newburyport, Massachusetts, February, 1792; died in New York City, June 16, 1860), was a son of Edmund March Blunt, a celebrated nautical author and publisher. He was a prominent whig and protectionist and one of the first organizers of the republican party, being the author of the original resolutions of the state convention at Saratoga in 1854. He was appointed commissioner to China by President Fillmore, but declined. President Lincoln appointed him United States district attorney for New York shortly before his death. He was a prominent writer on political and historical subjects.

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BOARDMAN, ANDREW (born in Lancashire, England, in 1813; died in New York City, May 11, 1881), came to this country in his youth and entered upon the practice of medicine, which he abandoned for the law. He was for many years associated with Jesse W. Benedict in the firm of Benedict & Boardman, which afterward was changed to Boardman & Boardman. His practice was chiefly in will cases, and he had a large business.

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BOARDMAN, DOUGLAS (born in Covert, Seneca county, New York, October 31, 1822; died in Sheldrake, New York, September 5, 1891), was graduated from Yale College in 1842, admitted to the bar in 1845, and settled in what was then the village of Ithaca, where he was soon in the enjoyment of a very successful



practice. He was elected district attorney of Tompkins county in 1848, and from 1852 to 1855 was county judge. In 1856 he became a member of the Supreme Court, and he sat on the bench of that tribunal until 1887, when he refused a renomination. He then accepted the position of dean of the law school of Cornell University, which he filled until his death.



OGARDUS, ROBERT (born in 1771; died in New York City, September 12, 1841), was one of the eminent lawyers of the first part of this century. He practiced in New York City. He was a colonel of infantry in the war of 1812, and was a member of the state senate.



BOSWORTH, JOSEPH SOLLACE (born March 27, 1807, at Cortland, New York; died in New York City, May 21, 1884), was graduated from Hamilton College with honor in 1826, admitted to the bar in 1830, and practiced in Binghamton until 1836, during part of which time he was district-attorney of Broome county. He was also an examiner and master in chancery by the appointment of Governor Marcy. Removing to New York City in 1836 he soon became actively and prominently engaged in the courts. He was elected to the assembly in 1843 and was for several years a member of the city board of education. He was elected judge of the Superior Court of the City of New York in November, 1851, and re-elected in 1857. From 1858 until his retirement in 1864 he was chief-justice of the court, and during the same period he was its reporter, publishing several volumes of Superior Court reports known as Bosworth's Reports. In 1863 he was defeated for re-election by the narrow margin of 26 votes, John H. McCunn becoming his successor. Upon leaving the bench he was appointed a police commissioner; in 1869 he was made president of the police board. In 1872 he retired from public life, and from that time until his death he acted as referee in civil cases, generally by selection of the litigants, and in that capacity decided more cases than any other member of the profession.

He was one of the founders of the Association of the Bar. While in active practice Murray Hoffman and John Graham were his partners, and his associates on the bench were Judges Duer, Oakley, and Woodruff. He was an ideal judge, highly conscientious, pure, and always animated by a strict sense of duty to the public.



BOWDOIN, GEORGE R. J. (born in November, 1809; died in London, England, March 14, 1870), was graduated West Point and was on General Winfield Scott's staff as aide-de-camp for several years. He afterward practiced law in the City of New York, ranking high in the profession and enjoy-

ing a lucrative business, as the head of the firm, Bowdoin, Larocque & Barlow, his associates being Joseph Larocque and S. L. M. Barlow.



OWMAN, FRANCIS CASWELL (born in New York City, December 26, 1831; died there October 29, 1884), was graduated at Brown University in 1852 and engaged in the practice of the law in New York. He led a successful professional career, but gave much of his attention to literary work and music. He was an accomplished writer on musical subjects. During the war he was instrumental in the organization of the United States sanitary commission at Washington.



BRADFORD, ALEXANDER WARFIELD (born in Albany, New York, in 1815; died in New York City November 5, 1867), was a son of John M. Bradford, D.D., of Albany. He was a graduate of Union College (1832), and after his admission to the bar advanced rapidly in reputation for ability and learning. He served three terms as surrogate, was a member of the commission to codify the laws of the state, and was prominently connected with many cases of importance. His decisions as surrogate in will contests were especially noteworthy. He published four volumes of "Reports of Surrogates' Cases" and six volumes of "Bradford's Reports" (a standard authority), edited a work on "American Antiquities," and was associated with Doctor Anthon in editing the *Protestant Churchman*.



RADY, JAMES TOPHAM (born in New York City, April 9, 1815; died there February 9, 1869), was the second son of Thomas S. Brady,<sup>1</sup> a lawyer of ability, under whose direction he received his education and his preparation for the legal profession. At the age of twenty-one, having been admitted to the bar, he began practice on his own account in New York. Almost immediately he became conspicuous as an advocate. His services were engaged in behalf of Sarah Coppin, an orphaned English girl, who, upon her arrival in New York, had been robbed, and, as a destitute person, barred out by the authorities. The brilliant ability with which he advocated her cause, obtaining her release, attracted great attention. He was speedily recognized as one of the foremost criminal lawyers of the times, and was constantly engaged as counsel in the most important cases. He united to magnetic eloquence a remarkable skill and

<sup>1</sup> Thomas S. Brady was born in Ireland, was admitted to the New York bar in 1836, and was a justice of the peace and an aidernman. He was a master of languages, and Cardinal McCloskey was one of his pupils. He had

three sons. The eldest, Thomas, was fitted for the law, but being appointed into the United States marine corps, he lived and died an officer of the navy.

tact in the management of his cases, unexcelled capacities in the cross-examination of witnesses, and the utmost lucidity in marshalling facts. He was thus considered almost irresistible before a jury. But although his reputation was essentially as a jury lawyer in the trial of criminal actions, he was also one of the eminent leaders of the bar in civil suits, "winning verdicts from judges and jurors alike in great patent cases, like that of *Goodyear vs. Day*; cases involving questions of medical jurisprudence, like the *Allaire and Parish* will cases, and the moral insanity plea in the case of the forger *Huntington* or the homicide *Cole*; divorce cases, like that of *Mrs. Edwin Forrest*."

He was appointed district-attorney of New York in 1843, serving for a brief period, and afterward was corporation counsel. He refused all political preferment except in the line of his profession, but in 1860 consented to stand as candidate for governor on the Breckinridge democratic ticket. Though he was an intense state-rights man before the war, he gave prompt and hearty support to the union cause and the war measures of the federal government. He was a member of the commission appointed to inquire into the administration of the department of the gulf under Generals Butler and Banks. He had refined literary tastes, contributed to the old *Knickerbocker Magazine*, and published a story, "A Christmas Dream." He was one of the most generous supporters of the library of the New York Law Institute.



BRADY, JOHN RIKER (born in New York City in 1821; died there March 16, 1891), was the younger brother of the preceding. Admitted to the bar in 1842, he went into partnership with his brother in the firm of Brady, Maurice & Brady, which became Brady & Brady upon the retirement of Mr. Maurice. He was elected judge of the Court of Common Pleas in 1855, and until his death, a period of thirty-five years, he served uninterruptedly on the bench. He was re-elected to the Common Pleas judgeship in 1869, receiving the support of all political parties, although at that time non-partisan judicial nominations were not much in vogue. Before the expiration of his second term he was elected a justice of the Supreme Court, and he was re-elected in 1877, again receiving a unanimous vote. On the Supreme bench he became presiding justice of the New York general term.

As a judge for so many years of the New York bench, John R. Brady has left an illustrious name. His decisions are uniformly marked by a high ability. He was of an impulsive and very genial temperament, differing quite radically from his brother, who was self-controlled. He married a sister of the wife of Judge Charles P. Daly.



BRONSON, GREENE CARRIER (born in Oneida, New York, in 1789; died in Saratoga, New York, September 3, 1863), established himself in Utica and became one of the leading lawyers of that city and section. He was elected surrogate of Oneida county in 1819, member of the assembly in 1822, attorney-general in 1829 (serving seven years), and a puisne judge of the Supreme Court in 1836. In 1845 he was elevated to the chief-justiceship of the Supreme Court, and in 1847 he was chosen one of the original members of the new Court of Appeals. Retiring from the bench in 1851 he took up his residence in New York, where, having suffered several pecuniary losses, he accepted the position of collector of the port (1853). From this place he was removed in 1854. He was the "hard-shell" democratic candidate for governor in 1855. From 1860 to 1863 he was corporation counsel.

The Court of Appeals, in a minute adopted on the occasion of Judge Bronson's death, paid him the following tribute:

Especially in the department of judicial duty he was justly pre-eminent. His opinions, both in the Supreme Court and in this court, are models of judicial excellence. In conciseness and perspicuity of expression, in terseness and directness of style, in compactness and force of logic, and in sturdy vigor of intellect, they are unsurpassed. Careful and deliberate in the formation of his conclusions, he was, from the very strength of his convictions, tenacious and confident of their correctness and courageous and resolute in their expression. Firm in integrity of purpose and action, bold in the denunciation and exposure of fraud, he was at the same time gentle and genial in all the relations of friendship and private life.



BRONSON, ISAAC H. (born in Rutland, New York, October 16, 1802; died in Palatka, Florida, August 13, 1855), was admitted to the practice of the law in 1822 and took a prominent place at the bar in Watertown. He was elected to congress as a democrat in 1836, but was defeated in 1838. He was then appointed judge of the 5th judicial district of New York, which position he left to become territorial judge of Florida, and later (1845) United States district judge for the northern district of the State of Florida.



BROOKE, CHARLES WALLACE (born in Philadelphia, April 10, 1836; died in New Brighton, Staten Island, February 7, 1897), was the son of Alexander Hamilton Brooke, a sea captain in the China trade. He was graduated from the University of Pennsylvania, studied law under Charles E. Lex, and was admitted to the Philadelphia bar in 1858. His eloquence and general legal ability won for him prompt recognition, and at the age of twenty-four he was already classed with Daniel Dougherty, Benjamin H. Brewster, and other leaders of the profession. During his



residence in Philadelphia he was counsel in numerous celebrated criminal cases. He was a democratic candidate for district-attorney and congress, but owing to the large preponderance of the republican party in Philadelphia was defeated. He came to New York in 1871, and with John R. Fellows and Judge Garvin organized the law firm of Garvin, Fellows & Brooke. He afterward was associated for a time with Doctor W. J. O'Sullivan, the medico-legal expert. At the New York bar Mr. Brooke ranked with the foremost of criminal lawyers, and in his last years he was constantly before the public in cases of commanding interest.

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**BROUGHTON, SAMPSON SHELTON**, was commissioned attorney-general of the Province of New York at the same time that Attwood came over as chief-justice. He was a London barrister, a member of the Middle Temple, well read in the law, a man of sense and integrity, and did not share the odium incurred by Chief-Justice Attwood. He gave it as his opinion that the addresses against the lieutenant-governor signed by Nicholas Bayard, Rip Van Dam, Philip French, and Thomas Wenham were not criminal, and that alderman and tavern-keeper Hutchins was not in contempt for refusing to give them up as traitors. For this act he was suspended from office after a grand jury had been induced to indict him for neglect of duty.

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**RYAN, WILLIAM G.** (born in Brighton, England, January 18, 1822; died from the results of an accident in Burlington, Iowa, October 25, 1867), was the son of William Bryan, who came to this country in 1830 and settled at Le Roy, Genesee county, New York. The early life of William G. was passed in circumstances of deprivation. He was admitted to the bar at Batavia, and in 1850 formed with General John H. Martindale the firm of Martindale & Bryan. Afterward he entered into partnership with Honorable Seth Wakeman in the firm of Wakeman & Bryan. During his connection with General Martindale he was counsel for the Tonawanda band of Seneca Indians in the litigation brought against them by the Ogden Land Company, and to his efforts was due the satisfactory arrangement with the Indians which was ultimately obtained from the United States government. He was an active and earnest democrat, but never held public office. He possessed many of the qualities of a great advocate, and his untimely death was much lamented.



**B**URR, AARON (born February 6, 1756, at Newark, New Jersey; died at Port Richmond, Staten Island, September 14, 1836), was the only son of the Reverend Aaron Burr and Esther Edwards, his wife, who was the daughter of Jonathan Edwards.<sup>1</sup> The year after Aaron's birth his father died, and a few months later both his mother and grandfather, Jonathan Edwards, also died. Burr and his sister Sarah were taken by their uncle, the Reverend Timothy Edwards, to his home at Elizabeth, New Jersey, and were reared by him. Their father had left an estate amply sufficient to educate them, and Tapping Reeve became their tutor. Reeve afterward married his pupil, Sarah Burr, and became chief-justice of the Supreme Court of Connecticut. When Burr was thirteen years of age he entered the sophomore class at Princeton, and he graduated at sixteen. In 1773, having some notion of studying theology, he went to live in Doctor Bellamy's family in Connecticut for that purpose, but left there the following year because after a study of the scriptures he concluded to reject them as not being inspired. He remained an infidel all his life. In 1774 he went to live with his brother-in-law, Tapping Reeve, at Litchfield, Connecticut, and commenced the study of law.

While there he heard of the battle of Lexington, and in 1775 went to Boston and joined the American army. From that place he went with Arnold in the expedition against Quebec. When at Quebec he bore a message from Arnold to Montgomery at Montreal, a very perilous thing to do. He was subsequently appointed aide to Montgomery and took part in the assault on Quebec. Having some difference with Arnold he left Quebec and proceeded to New York City, where he joined Washington's staff, but only remained with Washington six weeks, withdrawing to join Putnam's staff. In 1777 Washington promoted him to the rank of lieutenant-colonel. His regiment was stationed near the village of Paramus, New Jersey, and it was there he first met his future wife, Mrs. Prevost, the widow of an English colonel. In 1777-78 Burr with his regiment wintered at Valley Forge, and at the battle of Monmouth he commanded a brigade. Between Kingsbridge on the north of New York City and Dobbs Ferry there had been since

<sup>1</sup> Aaron Burr, the father of the subject of this sketch, was born in Connecticut in 1716. He graduated at Yale in 1735 and was licensed to preach. When twenty-two years of age he became the pastor of the presbyterian church in Newark, New Jersey. He also took in pupils for instruction in the classical languages. In 1748 he became president of Princeton College and was such when that college conferred its first degree. He was only thirty-two years old at that time. While he acted as the president of Princeton he also retained his church and school at Newark and acted in the dual capacity of minister and president for eight years. When he was thirty-seven years old he married (1752) Esther Edwards, who was twenty-one years old at the time. By this marriage he had two children, one a daughter, Sarah, and the other Aaron. He removed his family from Newark to Princeton in 1756 and died the following

year. He was the second president of Princeton and was in reality its founder, as the first president was merely a temporary one who served but a few months.

Burr's mother, Esther Edwards, was the daughter of Jonathan Edwards, and was noted for her beauty and piety. She inherited her father's intellectuality, and her son no doubt owed to her the inheritance of a great part of his talents.

Jonathan Edwards, Burr's grandfather, was born in Connecticut in 1703. He graduated from Yale in 1720. He was a tutor at Yale and afterwards became pastor of a church at Northampton, Massachusetts. He was chosen to succeed his son-in-law, Burr, as president of Princeton College, but died in 1758, the next year after assuming the duties of his office. He wrote "Freedom of the Will," and was perhaps the greatest intellectual force of the pre-Revolution period of American history,

the British occupied the city a reign of terror among the inhabitants, both tory and whig, because of the robberies and rapines of bands of freebooters, who plundered all alike. Burr was commissioned by Washington to rid this territory of these miscreants. When he assumed command with his headquarters at White Plains, Burr devised and put in operation a systematic scheme for the protection of all classes of the inhabitants, whether tory or whig. Order was soon restored and outrages ceased. In March, 1779, on account of ill-health, he resigned from the army. As an evidence that there were no strained relations between Washington and him at that time, the letter of Washington accepting the resignation is conclusive proof. Washington wrote that he "not only regretted the loss of a good officer, but the



BURR-HAMILTON DUEL.

cause which made his resignation necessary." The year following his resignation from the army occurred an incident which Burr related many years afterward. He was visiting his *flancé*, Mrs. Prevost, at Paramus, when Mrs. Benedict Arnold, under a military escort on her way to Philadelphia after her husband's treason and flight, stopped at the house. Burr in after years alleged that Mrs. Arnold then told Mrs. Prevost in his presence that she had inspired her husband to his treasonable acts and knew all about them.

In 1780 Burr began the study of law with a Judge Patterson of New Jersey, but in the following year went to Haverstraw, New York, and lived with Thomas Smith, a New York lawyer, who had been driven out of practice by the military occupation of the city. Under Smith Burr devoted himself diligently to studying the practice of the law and its technicalities, not caring to lay the foundations for a broad

juristic training. After he had been with Smith six months the legislature of New York passed an act disqualifying all tory lawyers from practicing. This Burr thought was his opportunity. He went to Albany to be admitted, but was confronted with the rule that candidates must have studied for three years before admission. With characteristic audacity he moved his own admission and asked for a suspension of the rule because his time had been spent for his country in the military service. The rule was suspended and Burr was licensed as an attorney, January 19, 1782, and was admitted as counsellor in April, 1782, when he was twenty-six years old. He opened an office in Albany and at once acquired a large practice. A few months after his admission to the bar he married Theodosia Prevost, who was ten years his senior and the mother of two sons.

After his marriage he set up house-keeping in Albany on an elaborate scale, and in the first year of his marriage was born his only child, named Theodosia, after her mother. He practiced law in Albany eighteen months, and when the British evacuated New York City in 1783 he removed there to practice. For the next eight years he confined himself almost exclusively to the practice of the law. His income was large, and he established himself at Richmond Hill, which had been Washington's military headquarters while in New York City. There Burr and his wife entertained very lavishly, Talleyrand, Louis Philippe and other distinguished persons being his guests at various times.

In 1784 and 1785 he was a member of the state legislature. While in the legislature he became conspicuous by opposing the incorporation of a mechanics' guild; he also advocated the abolition of slavery in New York. He took no part in the making or adoption of the federal constitution. He declared after the constitution was adopted that it would not last 50 years. In 1789 Governor Clinton appointed him attorney-general of the state, although he had, in conjunction with Hamilton, opposed Clinton's re-election as governor. In 1790 the attorney-general was made one of the three commissioners upon whom the legislature devolved the duty of classifying and deciding upon the claims of individuals for services rendered and losses sustained in the revolutionary war. Burr drew up a report which was accepted by the legislature. The principles upon which claims were allowed or rejected as stated in the report were made the bases of all future settlements with revolutionary creditors.

In 1791 he was elected over Philip Schuyler to represent New York in the United States senate. He was but thirty-five years old at the time. As a senator he acted with the republican (anti-federalist) party. While he was a senator his wife died, in 1794. Also while he was in the senate he received thirty electoral votes in the electoral college that chose John Adams president. After he retired from the United States senate he was immediately elected to the state legisla-



ture. In 1800 he and Jefferson each had seventy-three electoral votes for president. The House of Representatives chose Jefferson president and Burr vice-president. About this time his daughter was married to Joseph Alston, of South Carolina, who subsequently became governor of that state. In 1801, while Burr was vice-president-elect, he was chosen to preside over a convention called to make certain amendments to the state constitution. When he came to preside over the United States senate as vice-president his conduct was the essence of dignity and courtesy. He exhibited his fairness on one occasion when there was a tie vote by voting against the republican party and in favor of the federalists on a motion to refer a matter to a committee. While he was vice-president his memorable duel with Alexander Hamilton occurred. On the 11th of July, 1804, Burr mortally wounded Hamilton at Weehawken. Hamilton died from the effects of the wound, and Burr also may be said to have died socially and politically. After the duel he escaped first to Philadelphia and then to South Carolina, where his daughter lived. He was indicted in both New York and New Jersey, but the indictments were never pressed and he was never prosecuted. He returned to Washington and presided over the senate during the winter of 1804-5.



THEODOSIA BURR.

After his term as vice-president had expired he turned his attention to Mexico, and in consequence was indicted for treason, the indictment alleging that he intended to wrest some of the territory of the United States from them, and that he had committed an overt act of treason by arming and setting on foot an expedition which was prepared to make war on the United States. He was brought to trial at Richmond, Virginia, before Chief-Justice Marshall and was acquitted. After his acquittal he went to Europe, where he stayed until 1812, in which year he returned to New York City and resumed the practice of law. His daughter, who sailed from Charleston, South Carolina, in December, 1812, for New York, was lost at sea, the boat never reaching land. A few years before Burr died he married Madame Jumel, but he lived with her only a short while.

Burr was in no sense a great jurist. His success at the bar was as an attorney as contra-distinguished from a barrister. He particularly

shone at *nisi prius*; the logical atmosphere of the appellate court was not congenial to his taste. His forte lay in the preparation of a case for trial. He neglected no opportunity, however small, to insure success to his client. While his great rival Hamilton was studying a case from the standpoint of scientific principles, Burr was planning how he could get evidence to support a fact he thought would be material. His favorite maxim was "Law is whatever is boldly asserted and plausibly maintained." He was a consummate verdict-getter, but this was not due to his eloquence—for he always addressed the jury in a conversational tone,—but to his winning manners and his familiarity with the details of his case. As a *nisi prius* lawyer he may be termed the "Scarlett of the American bar."



USTEED, RICHARD (born in Cavan, Ireland, February 16, 1822), was the son of George Washington Busteed, a Dublin barrister, who emigrated to Canada and thence to the United States. Richard Busteed was admitted to the bar in 1846 and engaged in successful practice. His connection with several important extradition cases contributed much to his reputation. He was corporation counsel of New York from 1857 to 1859. Though an intense Douglas democrat, he warmly supported President Lincoln and the union cause after the firing on Sumter. He was appointed brigadier-general of volunteers, and resigned in 1863. In the same year he was appointed United States district judge for Alabama. In this office, which he assumed in the fall of 1865, he rendered a notable decision, maintaining that the test oath prescribed by congress was unconstitutional so far as it applied to attorneys practicing before United States courts. This decision became a precedent and was supported by the Supreme Court. Much attention was attracted by the action of Judge Busteed in matters involving suspension of the habeas corpus act, in which he was in conflict with the military authorities. He resigned in 1874 and returned to New York, resuming the practice of the law.



UTLER, BENJAMIN FRANKLIN (born at Kinderhook Landing, New York, December 14, 1795; died in Paris, France, November 8, 1858), was descended from an original Irish stock combined with that of the early puritans by the marriage of his ancestor, Jonathan Butler, with Temperance Buckingham, a daughter of one of the first settlers of Connecticut. His father, Medad Butler, emigrated from Connecticut in 1787 to the banks of the Hudson. He served in the state legislature, and for many years was county judge of Columbia county.

Benjamin F. Butler was the eldest of a family of six children. He attended school in his native town, under capable instructors, and

as a lad acquired a decided fondness for reading, and especially for the classics. In 1811 he entered the law office, at Hudson, of Martin Van Buren, who was an intimate friend of his father. He was an inmate of Mr. Van Buren's family until his marriage, in 1818, and became his law partner in Albany upon his admission to the bar (1817). In 1821 he was appointed district-attorney of Albany county. He resigned this office in 1825 to devote himself to the great work of revising the statutes of the state.

By an act passed November 27, 1824, he had been appointed a member of the revision commission, the other original members being Chancellor James Kent and Erastus Root, then lieutenant-governor. The act required that the work should be completed in two years, and it provided that each of the revisers should receive \$1,000 for his services. Chancellor Kent declined to serve, and John Duer was appointed in his stead. Mr. Butler and Mr. Duer were from the outset in hearty accord as to the principles and methods to be pursued in their undertaking. They advanced the proposition that the time had come when the whole written law might be comprised under appropriate titles, classified in natural order and arranged, as to each of its branches, in a clear and scientific method; and, while conceding the novelty and difficulty of the project, declared their readiness to undertake it. "We propose to do nothing more," they said, "than to free our written code from the prolixities, uncertainties, and confusion incident to the style and manner in which it has hitherto been framed, and to apply to the elucidation of this branch of the noblest of all sciences those principles of an enlarged philosophy which now obtain in every other department of knowledge." General Root was not in agreement with his ardent young associates in their bold plan. He accordingly retired from the commission, and Henry Wheaton was appointed to take his place. Mr. Wheaton contributed comparatively little to the active labors of the commission, and resigned in March, 1827, to accept a diplomatic position abroad. He was succeeded by John C. Spencer. Mr. Duer soon afterward withdrew, having been appointed United States district-attorney at New York City by President Adams. The work was completed by Mr. Butler and Mr. Spencer, and the entire body of the revised statutes was enacted by the legislature, December 10, 1828.

Mr. Butler was, therefore, the only one of the revisers who served from the beginning to the end. It is not detracting from his able associates to say that he bore, in a peculiar manner, the burden of this great task. The original general plan of the revision was prepared by him, and by far the larger part of the entire revision was his individual work. For his conscientious and long-continued labors—extending through four complete years, including the time devoted to the publication of the statutes—he received from the state only \$7,600.

Returning to the active practice of his profession, he was constantly employed in the most important cases, especially in the Court of Errors. In 1833, upon the retirement of William L. Marcy from the United States senate to become governor of New York, Mr. Van Buren (then vice-president and presumptive successor to the presidency) earnestly desired Mr. Butler to take the high office thus left vacant; but he was resolved to assume no position which would withdraw him from his professional pursuits. He was afterward offered by Governor Marcy a place on the bench of the Supreme Court of the state, but was prevented from accepting because of the meagreness of the salary. He served in 1833 on the commission selected to settle the boundary line between New York and New Jersey.

Toward the close of the same year, at the urgent solicitation of President Jackson, communicated to Mr. Butler by Mr. Van Buren, he accepted the cabinet office of attorney-general of the United States. Upon the resignation of General Cass as secretary of war in 1836, Mr. Butler, at the president's request, assumed also the duties of the war department until the close of President Jackson's term. He continued to serve as attorney-general during the first year and a half of Van Buren's administration, and then, resigning, removed to New York City and engaged in the practice of the law at the metropolitan bar. It had long been a favorite project of Mr. Butler's to establish a law school in connection with the University of the City of New York, and he now (1838) attempted its realization, receiving the co-operation of William Kent and David Graham, who, jointly with him, were professors and lecturers in the new institution. Meantime, until 1841, he was United States district-attorney.

He took a leading part in the democratic national convention of 1844 as an advocate of the nomination of Mr. Van Buren for the presidency, delivering a powerful address against the adoption of the two-thirds rule. He was offered a portfolio in the cabinet of President Polk but declined, contenting himself with resuming the office of district-attorney at New York, which he retained until the spring of 1848. In that year he supported Mr. Van Buren's "free-soil" candidacy. In 1849 he declined an appointment as one of the code commissioners tendered him by Governor Fish. In the presidential campaign of 1852 he sustained the democratic candidates on the ground that they represented sound democratic doctrines and that their election under the existing state of things would place the whole responsibility of the government in the hands of the democratic party, which, if it should then lend itself to a crusade against freedom, would be justly overthrown. When President Pierce disappointed the expectations of the northern democrats on the slavery issue, Mr. Butler promptly severed his life-long connection with the democratic organization. At a memorable mass-meeting of citizens, held in City Hall Park, May 15, 1854, he was the principal speaker, and declared himself aggressively against



all further alliance with the slave power. In this attitude he persevered to the end of his life, voting for Frémont in 1856 and taking a keen interest in the Kansas struggle.

The close of his professional career was signalized by a notable triumph in a famous litigation, growing out of the attempt of the representatives of an insolvent speculative corporation, the North American Trust and Banking Company, to defeat the claims of its secured creditors, chiefly English capitalists. He was the senior counsel for the creditors, and the Court of Appeals decided the case on all points in their favor.

He died of a sudden illness while on a trip abroad, November 28, 1858.

Mr. Butler's character was singularly pure and noble. No name in all the history of the New York bar is held by posterity in higher honor than his. Notwithstanding the distinction which he attained in the maturity of his career, he always regarded his connection with the revision of the statutes as the distinctive work of his life; and on his tombstone in Woodlawn cemetery are inscribed the words: "A Commissioner to Revise the Statutes of the State of New York."



UTLER, George B. (born in New Haven, Connecticut, in 1809; died in New York City, April 13, 1886), was admitted to the bar in New York and established a law firm with Daniel Lord. At the organization of the Hudson River Railroad Company he was its secretary and counsel, and for twenty-five years he was the legal adviser to A. T. Stewart & Co. He was one of the founders and editors of the *Journal of Commerce*.



ADY, DANIEL (born in Chatham, New York, April 29, 1773; died in Johnstown, New York, October 31, 1859), was admitted to the bar in 1795 and practiced in Johnstown; was a member of the legislature from 1810 to 1813 and a federalist member of congress from 1814 to 1817, and served as justice of the state Supreme Court from 1847 to 1855.



AINES, GEORGE (born in 1771; died in Catskill, New York, July 10, 1825), was prominent among the early legal writers, and for a long period was official reporter of the Supreme Court of New York. His important works are: "*Lex Mercatoria Americana*" (1802), "Cases in the Court of Errors" (2 vols., 1805-7), "Forms of the New York Supreme Court" (1808), "Summary of the Practice in the New York Supreme Court" (1808), "Cases in the Court for the Trial of Impeachments," etc. (2 vols., 1805-7), and "New York Supreme Court Reports" (3 vols., 1803-5; 2d ed., 1852).



**CAMPBELL, WILLIAM W.** (born in Cherry Valley, Otsego county, New York, June 10, 1806; died there September 7, 1881), was graduated from Union College in 1827 and studied law under the direction of Chancellor Kent. Removing to New York he entered upon legal practice in 1831. In 1841 he was appointed master in chancery, and in 1842 commissioner of bankruptcy for the southern district of New York. He served a term in congress (1845-47) as a representative of the national American party, during which he took a prominent part in effecting reform in the consular service. From 1849 to 1855 he was a justice of the Superior Court of New York City, serving contemporaneously with Duer and John L. Mason. He was a justice of the Supreme Court for the 6th judicial district from 1857 to 1865.

He was the first judge who held, under the statute enlarging the legal rights of married women, that a man could convey real estate directly to his wife without the intervention of a trustee. He was the author of several historical and biographical works: "Annals of Tryon County, or the Border Warfare of New York" (1831, republished in 1849 and 1880), "Life and Writings of De Witt Clinton" (1849), "Memoirs of Mrs. Grant, Missionary to Persia" (1840), and "Sketches of Robin Hood and Captain Kidd" (1853).



**HAMBERS, JOHN** (born about 1710; died in New York, April 10, 1765), was a member of the executive council in 1754 and one of the commissioners to the Albany congress in June of that year. He was eminent as a lawyer and was associated in the famous Zenger case. He was appointed associate-judge of the Supreme Court in 1757 and became chief-justice.



**HAPMAN, ORLOW W.** (born in Ellington, Connecticut, in 1832; died in Washington, D. C., January 19, 1890), was graduated from Union College, and for a number of years was a professor of languages. In 1856 he began the study of the law with Robert Parker, and in 1858 he entered upon the practice in Binghamton. He was appointed district-attorney of Broome county in 1862 and re-elected in 1865. He served in the state senate in 1870 and 1871. At the time of his death he was solicitor-general of the department of justice.



**HATFIELD, LEVI B.** (born in Otsego county, New York, March 5, 1808; died in Elizabeth, New Jersey, August 4, 1884), was admitted to the bar and began practice in Laurens, New York. He was elected to the assembly as a democrat in 1838 and became its speaker in 1842. In 1847 he was elected attorney-general, and he was re-elected in 1851. He resigned the office

in 1853 to accept the position of president of the Atlantic & Pacific Railroad Company, from which he retired in 1861, resuming the practice of the law. He was a professor in the law department of the University of the City of New York. He was eminent at the bar, having charge of many important cases.



**CHURCH, SANFORD ELIAS** (born in Milford, Otsego county, New York, April 18, 1815; died in Albion, New York, May 14, 1880), after receiving an academic education fitted himself for the profession of the law, and began its practice in Albion. He very soon attained an excellent reputation as a practitioner. From early life he was active also in politics, giving his support to the principles of the democratic party. In 1842 he became a member of the assembly from Orleans county. In 1846-47 he was district-attorney of the county, from 1851 to 1855 lieutenant-governor, and in 1858 and 1859 comptroller of the state. In 1862 he was a candidate for congress, but was not elected, and in the next year he was defeated as a candidate for comptroller. He was a delegate to the constitutional convention of 1867, being chairman of its committee on finance. The reorganization of the Court of Appeals effected under the judiciary amendment of this convention provided that the court should in future consist of a chief-judge and six associates, each to hold office for fourteen years. Mr. Church was chosen chief-judge of the new Court of Appeals (1870), and filled that office with great distinction until his death. The opinions delivered by him from that bench belong to the first order of judicial literature, being especially marked by solid qualities. Judge Church's personality was in all respects of the highest. As a public man, although the purely political offices filled by him were comparatively subordinate, he ranks with the very distinguished sons of the state. In his latter years he was considered one of the most available men of the democratic party for the presidency of the United States.



**LINTON, DE WITT** (born in Little Britain, New Windsor, Orange county, New York, March 2, 1769; died in Albany, New York, February 11, 1828), was a son of General James Clinton of the Revolution.<sup>1</sup> He was graduated at Columbia College in 1786, and studied law under the direction of Samuel Jones,

<sup>1</sup> James Clinton distinguished himself in the French and Indian war, and early in the Revolution was appointed brigadier-general. He was conspicuous in several exploits and expeditions, and commanded at Albany during a considerable part of the war. After the establishment of peace he became prominent in public life, serving as a commissioner to adjust the boundary between New York and Pennsylvania, as a

member of the state legislature and as a member of the convention that framed the national constitution. He was born August 9, 1736, and died December 22, 1812.

His father, Charles Clinton, ancestor of the Clinton family (born in county Langford, Ireland, in 1690; died in Orange county, New York, November 19, 1773), was a farmer and land surveyor, and served as justice of the peace, county judge and lieutenant-colonel of militia.

being admitted to the bar in 1788. Naturally adapted for public employments, he enjoyed unusual opportunities for engaging successfully in politics. He wrote for the press a series of letters on the newly-adopted national constitution from the anti-federalist point of view, and in 1790 he became private secretary to Governor George Clinton, his uncle. While in this position he held other important offices. In 1797 he was a member of the lower house of the legislature, and from 1798 to 1802 of the senate. As a senator he advocated, among other measures, the relief of prisoners for debt, the abolition of slavery in the state, and the promotion of the use of steam in navigation. He became a member of the United States senate in 1802, but soon resigned, having been appointed mayor of New York City. In this office he



DE WITT CLINTON.

continued, with the exception of four years, until 1815. Meantime he was state senator (1805-11) and lieutenant-governor (1811-13). In 1812 he was an aspirant for the presidency, but having alienated a large element of his party from him by his course in certain regards, he failed to realize his ambition and Madison was chosen. As mayor of New York he displayed the greatest and most intelligent public spirit, and the beginning of the metropolitan character of the city dates from his régime. He was identified from the beginning with the Erie canal enterprise, and the

ultimate construction of the canal was due mainly to his efforts. In consequence of his activity in this popular cause he was elected governor in 1817 by a non-partisan vote. He was re-elected in 1819. Disapproving some of the amendments to the constitution adopted by the convention of 1821, he declined to be again a candidate. His enemies in 1824 caused him to be displaced from his position of canal commissioner. This act aroused public resentment and led to his re-election as governor in 1824 by the large majority of 16,000. The canal was formally opened in the next year, and in 1826 he was again chosen governor. He died before the expiration of his term.

De Witt Clinton's attainments were those of the broadest statesmanship, sustained by a thorough mastery of the science of the law.





CLINTON, GEORGE (born in Little Britain, Ulster county, New York, July 26, 1739; died in Washington, District of Columbia, April 20, 1812), was the fourth son of Charles Clinton and the uncle of De Witt Clinton.

As a youth he saw service in the French and Indian war. He studied law in the office of William Smith, a renowned colonial lawyer. As a member of the assembly in 1768 he was prominent in advocating the rights of the colonies. The New York provincial convention, April 22, 1775, elected him one of the delegates to the second continental congress. In that body he, with his New York colleagues, refrained from voting on the question of independence, leaving that matter to be passed upon by the provincial congress of his state, which promptly (July 8, 1776) approved the declaration of independence. He was dispatched by Washington to the Highlands of New York in the same month with the rank of general of militia. He was a deputy to the provincial congress of 1777, by which the New York state constitution was framed, but his participation in its deliberations was interrupted by another summons to the field, the appointment of brigadier-general in the continental army having been conferred on him in March. He commanded in the defence of the Highland forts in October, 1777. On April 20, 1777, he was elected governor, being the first to fill that office, and he served in it continuously until 1795. His administration was characterized throughout by vigor and public spirit. He was again elected governor in 1801. At the early presidential elections he received votes for the presidential office. He was vice-president of the United States from 1804 until his death. Governor Clinton was a strong anti-federalist, and originally opposed the adoption of the constitution on the ground that it gave excessive power to the central government, but he acquiesced in that instrument, and was the presiding officer of the state convention held in 1788 to ratify it.



CLINTON ARMS.

He was a sound lawyer, excellently versed in the principles of the law and well equipped by temperament and judgment in its practical applications.



CLINTON, GEORGE W. (born in New York City in 1807; died in Albany, September 7, 1885), was a son of De Witt Clinton. He was graduated at Hamilton College in 1829

and studied both medicine and law, devoting himself to the practice of the latter. He was admitted to the bar in 1831 and was taken into partnership by John C. Spencer, whose daughter he married. In 1835 he removed to Buffalo. Here he took a leading place in his profession and filled various offices. He was successively examiner in chancery, collector of customs, mayor of Buffalo (1847-49), and

judge of the Superior Court of Buffalo for twenty-three years from 1854, being its chief-justice during the last seven years of his service. He was a delegate to the constitutional convention of 1867, serving as chairman of the committee on canals. He was for a long time a member of the board of regents of the state university.

Mr. Clinton was an eminent scholar and rendered a valuable service to the state by editing the vast collection of papers in the state library at Albany relating to the public career of George Clinton

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**COCHRANE, CLARK B.** (born in New Boston, New Hampshire, in 1817; died in Albany, New York, March 5, 1867), was graduated at Union College and admitted to the bar. He took an active part in politics as a democrat, was chosen to the assembly from Montgomery county in 1844, afterwards affiliated with the "barnburner" faction, opposed the Kansas-Nebraska bill, and then joined the republicans, being elected to congress in 1856 and 1858 from the Schenectady district. In 1865 he was again elected to the state legislature. He was a lawyer and legislator of ability, and was styled "The Great Pacificator" because of his tact in soothing passionate debate.

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**CODDINGTON, DAVID SMITH** (born in New York City in 1823; died in Saratoga, New York, September 2, 1865), was a son of John I. Coddington, postmaster of New York under President Jackson, and a lineal descendant of one of the oldest families of the country, whose ancestor was William Coddington, founder, judge, and first governor of Rhode Island. He was graduated from Union College and studied law in the offices of George W. Strong and Slosson & Schell, being admitted to the bar at the age of twenty-one. As a youth he displayed fine oratorical talents, and he became one of the most eloquent lawyers and political speakers of his time. Devoted to the democratic party, he did not, however, approve the policies of the extreme leaders of that organization. He was prominent in the free-soil democracy, and gave hearty support to the government in the war. He was elected to the legislature in 1861. At the meeting of the war democracy at Cooper Union, November 1, 1864, he delivered a memorable address.

A brother of Mr. Coddington's, Jefferson Coddington, was a successful practitioner, devoting himself to office practice and to the management as trustee of several very large estates.



COGSWELL, WILLIAM JOHNSON (born at New Preston, Connecticut, November 4, 1799; died at the residence of his daughter, Mrs. Canfield, in New York City, March 7, 1885), was the son of Colonel William Cogswell and Amaryllis Johnson, a grandson of Major William Cogswell of the revolutionary army, and lineally descended from John Cogswell, who emigrated from Westbury, England, to Ipswich, Massachusetts, in 1634. Obtaining his early education in the local schools, Mr. Cogswell attended Yale College until the close of his sophomore year, when the death of his father forced him to devote himself to the care of the family. He taught school, kept a store, and tried farming, while at the same time studying law.

Admitted to the bar at Albany, New York, he began practice at Poughkeepsie, but removing to New York City in 1831 formed a partnership with Philip S. Croke. In 1834 he settled at Jamaica, Queens county, New York, where he continued to reside until a few years previous to his death.

Soon after removing to Jamaica his attention was directed to questions relating to trusts, construction of wills, and the law of real property, and his practice was largely in these directions. In 1849 he was appointed county judge and surrogate of Queens county to succeed Judge Hagner, deceased. In 1853 he also opened a law office in Brooklyn, in association with Honorable William Rockwell, and after the elevation of the latter to the Supreme Court formed a partnership with George Vandeverg, which continued until Mr. Vandeverg's death, in 1859. Judge Cogswell retired from active practice in 1875, although he argued his last case in the Supreme Court in 1880, when more than eighty years old.

He was early recognized as a leader of the bar in Queens county, and after his removal to Brooklyn, by his success in such important interests as the Terhune and Fleet trusts, the Cornell and Udall will contests, and other notable cases, took rank with the leading lawyers of his day in those burdens of the profession. He was not quick at forming conclusions, but a diligent student and painstaking investigator, and when by such mature deliberation he arrived at a judgment, he was seldom mistaken. He was a man of broad views; charitably inclined, being ever ready to relieve distress or give encouragement; not a self-seeker, though active in politics and general affairs. He ran for congress on the whig ticket, but was defeated. He early joined the republican party, and earnestly supported the government during the civil war. Two of his sons went to the front, one of them, George E., dying in the service.

For many years Judge Cogswell was president of the village of Jamaica. He was also president of the board of trustees of Union Hill Academy. He was an active churchman, and the erection of the diocese of Long Island was largely due to his efforts.



**COLDEN, CADWALLADER DAVID** (born in Springhill, near Flushing, Long Island, April 4, 1769; died in Jersey City, February 7, 1834), was a grandson of Cadwallader Colden, royal lieutenant-governor of New York during the stamp act excitement, and an eminent physician and scientific scholar. He completed his education in England, returned to the United States and was admitted to the bar in New York in 1791. Later he practiced for a while in Poughkeepsie, but he soon resumed his residence in New York and became one of the most prominent lawyers and citizens. He was the recognized leader of the bar in commercial law. He was appointed district-attorney in 1810, was a member of the legislature in 1818, and in

*Cadwallader D. Colden* the same year succeeded De Witt Clinton as mayor, and

from 1824 to 1827 was a state senator. Notwithstanding his tory ancestry, he was a strong patriot, and in the war of 1812 was colonel of a regiment of volunteers. He cordially seconded De Witt Clinton's schemes of internal improvements, took a warm interest in educational subjects, and for a long period was a governor of the New York Hospital. He was an intimate friend of Robert Fulton and published his life (1817), to which he added a "Vindication of the Steamboat Right Granted by the State of New York" (1819). He also wrote a "Memoir of the Celebration of the Completion of the New York Canals" (1825).



COLDEN ARMS.



**BEACH, SETH** (born in Prattsburg, Steuben county, New York, December 25, 1820; died in Nyack, New York, February 1, 1895), was graduated at Union College in 1846, and was principal of Franklin Academy in Prattsburg for nine years. He was active in politics, representing Steuben county in the legislature (1855-56) and taking a warm interest in the work of the Kansas aid committee, for which he raised \$40,000. He removed to Brooklyn and was admitted to the bar in 1855. From there he removed to Nyack in 1867. He served as a county judge of Rockland county.



**OLLIER, JOHN A.** (born in Broome county, New York, in 1787; died in Binghamton, New York, March 24, 1873), was one of the original commissioners on the code. He was a prominent lawyer in Binghamton, was a member of congress (1831-33), and was state comptroller (1845-46).





COMSTOCK, GEORGE FRANKLIN (born in Williamstown, Oswego county, New York, August 24, 1811; died in Syracuse, September 27, 1892), was the son of Serajah Comstock, a revolutionary soldier. He was graduated from Union College with high honors in 1834, and immediately entered the law office of Noxon & Leavenworth. Admitted to the bar in 1837, he started in practice at Syracuse and advanced rapidly in reputation. In 1847 he was appointed by Governor Young reporter for the Court of Appeals, a position which he retained for three years, at the same time continuing in active practice. In this period he published the first four volumes of the New York Reports. In 1852 President Fillmore made him solicitor of the treasury of the United States. In 1855 he was elected associate-judge of the Court of Appeals, occupying that bench for six years, during two of which he was its chief-justice. His opinions are contained in the thirteenth to the twenty-fourth volumes of the New York Reports. One of the most celebrated of them is his opinion in 1856 annulling the prohibitory liquor law, which was finally acquiesced in by a divided bench. His opinion in *Curtis et al., vs. Leavitt*, maintaining the validity of the obligations of the North American Trust and Banking Company, amounting to \$1,500,000, held by British creditors, fills one hundred and twenty-five pages of the thirteenth volume of the reports.

Judge Comstock was a strong partisan of the democratic party, and this caused his defeat when he became a candidate for re-election to the Court of Appeals in 1861. Except as delegate for the state-at-large to the constitutional convention of 1867, his subsequent career was devoted to his private practice. He framed, with the co-operation of Honorable Charles J. Folger, the judiciary article of the proposed new constitution, which was the only part of that instrument ratified by the people. The distinction he had gained on the bench brought him many cases involving the most important legal principles and the largest interests. With William M. Evarts he was counsel for William H. Vanderbilt in defending his father's will. His later professional work appertained specially to landed and trust estates.

He initiated the movement to establish the University of Syracuse, and donated a large amount of money to that institution. He was one of the founders of Saint John's School for boys, to which he gave \$50,000, and he was a trustee of the State Asylum at Syracuse.



ONKLING, ALFRED (born in Amagansett, Suffolk county, New York, October 12, 1789; died in Utica, February 5, 1874), was graduated at Union College in 1810 and admitted to the bar in 1812. He served as district-attorney of Montgomery county, as an anti-Jackson democratic member of congress (1821-23), as judge of the United States District Court for northern

New York (1825-52), and as minister to Mexico. He remained in Mexico for only a year, and upon his return gave his attention chiefly to literary pursuits. He published "Treatise on the Organization and Jurisdiction of the Supreme, Circuit, and District Courts of the United States" (2d ed., 1842), "Admiralty Jurisdiction" (2 vols., 1848), "The Powers of the Executive Department of the United States" (1866), and "The Young Citizen's Manual."



CONKLING, ROSCOE (born in Albany, October 30, 1829; died in New York City, April 18, 1888), was a son of Honorable Alfred Conkling. He inherited his father's high ability and aggressive, resolute and persistent character. He did not enjoy the advantages of a university education, but he pursued a course of academic studies, supplemented by a wide range of general reading. At the age of fifteen he entered the law office of Spencer & Kernan in Utica. The members of this firm were Joshua A. Spencer and Francis Kernan. Immediately after his admission to the bar, at the age of twenty-one, he was appointed by the governor district-attorney of Oneida county, to fill a vacancy. He filled this office with conspicuous ability and was nominated by his party for election for a full term, but was defeated. He then for a number of years devoted himself exclusively to professional business, and rose to an eminent place at the bar. He distinguished himself especially in the conduct of trials, and was known as one of the most skillful cross-examiners and one of the most powerful advocates before a jury. He also was noted for his careful study of the principles of the law bearing on his cases; and it was one of his remarkable traits that this learning in the law obtained in his early years was always preserved by a retentive memory, notwithstanding the distractions incident to a long career in pursuits removed from the routine of the courts.

After filling the office of mayor of Utica for two terms, he entered the lower house of congress in December, 1859, as a republican member. From that time until 1881 he was mainly engrossed in public affairs, although during the recesses of congress he appeared from time to time in special cases. He continued to serve in the house of representatives (excepting for one term) until he was chosen to the senate in 1867, and he remained in that body until 1881, when he resigned, and, coming to New York City, practiced at the bar until his death.

Mr. Conkling was one of the most noteworthy public men of the last half century. The course of momentous political history was largely shaped by his individuality. In the house of representatives he was a strong supporter of the war measures. In the senate he was prominently identified with the framing and the enactment of much of the important legislation of the memorable period from 1867 to

1881. He supported the southern policy of President Grant, the civil rights bill, and the bill for resumption of specie payments, and took a leading part in the electoral commission project of 1876-77. But it was as a masterful party leader that Senator Conkling was distinctively known and exercised his most positive influence. He was the pillar of the Grant administration in the legislative department of the government. His feud with James G. Blaine had far-reaching political consequences, twice preventing the nomination of Mr. Blaine for the presidency, and, by reason of the factional division in the republican party of New York which grew out of it, contributing materially to his defeat by Mr. Cleveland in 1884. Mr. Conkling was himself a candidate for the republican presidential nomination in 1876, receiving 93 votes in the national convention. He had differences with President Hayes on the question of the New York patronage, which culminated in the removal by the president of Mr. Arthur as collector of the port of New York. At the national convention of 1880 he led the movement for the nomination of President Grant for a third term. President Garfield, soon after his inauguration, greatly offended Mr. Conkling by his appointments to the New York offices, and in consequence the latter, with his colleague, Senator Platt, resigned and sought re-election by the New York legislature as vindication. But the legislature refused to re-elect them, and Mr. Conkling's public life was at an end.

President Grant on November 8, 1873, offered to Mr. Conkling the position of chief-justice of the United States Supreme Court, and subsequently renewed the offer, but he declined the place. He also declined a tender by President Grant of the mission to England. He was offered a seat on the Supreme Bench by President Arthur, but again declined.

Of Mr. Conkling's professional life in New York after his retirement from the senate, one of his intimate friends has written as follows:

The career of Mr. Conkling at this bar, and in the courts of other states, after his return from public life, was one of the most remarkable events in the annals of our profession. He commenced here alone. He was, of course, at once brought into competition with a numerous bar, many of whom were near his age, and who had been drilled by the uninterrupted practice of their profession, in which they had risen to distinction during the years in which Mr. Conkling had devoted his energies to public affairs. But his success was assured from the start. He was employed in a great many important cases. His clients ranked him, and rated the value of his services, very high. It is safe to say, I think, that during those seven years of his practice he received a larger professional income than was ever paid, in the same length of time, to any other lawyer of this country. Something, doubtless, is to be credited to personal admiration and personal devotion, but, in the main, his unprecedented success was due to the fact that he was deemed by those having great interests at stake to be as great a power at the bar as he had been in public life.<sup>1</sup>

His death was due to exposure in the "blizzard" of March 12, 1888.

<sup>1</sup> William D. Shipman, memorial sketch in New York City Bar Association Report, 1890.



CORTLANDT, STEPHEN. See VAN CORTLANDT, STEPHANUS.

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COWEN, ESEK (born in Scituate near the close of the seventeenth century, died in 1844), ranked among the foremost lawyers and judges of New York state. Early obtaining marked recognition as a practitioner, he was appointed in 1823 reporter to the Supreme Court, retaining the position until 1828. During the period of his service he produced seven volumes of reports. In 1828 he was appointed judge of the 4th Circuit in place of Reuben H. Walworth, who was made chancellor. In 1836 he became associate-justice of the Supreme Court, filling the position with distinguished ability until 1844. He was author of "Civil Jurisdiction of Justices of the Peace," and, in connection with Nicholas Hill, of "Notes to Phillips' Evidence," a standard book of reference on that branch of the law.

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COWEN, ESEK, nephew of the preceding (born in Hartford, Washington county, New York, October 14, 1834), was the son of Judge Solomon S. Cowen and Electra T. Bush. His father was born in Scituate in 1790, moved to this state in 1810, and was for many years judge of the Court of Common Pleas of Washington county. Esek Cowen was educated at the Troy Conference Academy, West Poughkeepsie, Vermont, graduating in 1852. Following the profession of his father he entered the office of B. F. Ager, of Granville, afterward the office of Hill, Cagger & Porter, completing his preparatory studies at the Albany Law School. He was admitted in 1855, opened an office at Troy, soon after removed to Saratoga, and ten years later returned to Troy, practicing five years alone, after which he entered the firm of Smith, Cowen & Fursman, of Troy, and as counsel for the New York Central & Hudson River Railroad, the Citizens' Steamboat Company, and several local corporations of Troy, became especially prominent in his profession.

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CUGER, DANIEL (born in Sunbury, Pennsylvania, December 22, 1780; died in Wheeling, West Virginia, June 5, 1843), was descended from a German ancestry, his father having emigrated to Pennsylvania from the Duchy of Holstein in 1768. He was apprenticed to a printer in Albany, New York, and after learning his trade removed to Owego and started the *Owego Democrat*, the first newspaper published in that part of the state. In 1804 he entered the office of General S. S. Haight in Bath, New York, as a student of the law, and in 1806 he was admitted to the bar. He



immediately became prominent in the profession, and within a few years ranked with the leading men of the Steuben bar. He served with credit for a brief time in the war of 1812, and from 1813 to 1816 was a member of the assembly, being chosen speaker in 1816. Meantime he was district-attorney for the 7th district. In 1816 he was elected to congress. In 1815 he formed a legal copartnership with William B. Rochester. In 1833 he married a Miss Shepard, of Wheeling, West Virginia, and soon afterward he took up his residence in that city. Mr. Cruger was one of the most distinguished advocates of his time in the western part of the state.

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CURTIS, GEORGE (born in Windsor, Vermont, September 19, 1799; died June 2, 1884), was graduated at Union College in 1822. He entered the legal profession, and at once advanced to high rank at the bar of New York City. For many years he resided in Brooklyn, and he was prominent in the affairs of that city. In his younger years, as a member of the legislature, he was an able coadjutor of De Witt Clinton. He became one of the leaders of the whig party, and took a keen interest in its success. He removed to Schenectady in 1867 and retired from the active pursuit of his profession.

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CURTIS, GEORGE TICKNOR (born in Watertown, Massachusetts, November 28, 1812; died in New York City, March 28, 1894), was a brother of Justice Benjamin Robbins Curtis of the United States Supreme Court, and a nephew of George Ticknor Curtis, of Boston, the distinguished man of letters and professor of languages in Harvard. He was graduated at Harvard in 1832, read law, and began practice in Boston. He soon attained great prominence at the bar, his specialties being patents and constitutional law. He argued the law points in the Dred Scott case before the United States Supreme Court while his brother was still on the bench. From his early life he was active in politics as a democrat, but in the war he was an earnest unionist. He was a close personal friend of Daniel Webster, and one of his literary executors, and in 1870 he published a life of that great statesman. He was a prolific author. Among his published works were a history of the constitution of the United States, a treatise on copyrights, a book on admiralty law, "Equity and Precedents," and a biography of James Buchanan.

In 1863 Mr. Curtis removed to New York. In that city he continued until his death in the front rank of practitioners and jurists. He was counsel in many patent suits of historical importance, among them the Colt revolver suits, the Goodyear rubber cases, and celebrated sewing-machine litigations. He argued numerous important war claim cotton cases. In 1888 he gave up his active practice, but continued to

take a hearty interest in constitutional and miscellaneous questions, and was a frequent contributor to the press.

Mr. Curtis never held public office, except as a justice of the peace.



**A COSTA, CHARLES M.** (born on the island of Saint Thomas, West Indies, May 5, 1837; died in New York City, June 22, 1890), was educated in Europe and in New York City, graduating from Columbia College in 1855. He began the study of the law in the office of Alexander Hamilton, Junior, was admitted to the bar soon after attaining his majority, and practiced for a time as an assistant to Lorenzo B. Shepard. Almost at the beginning of his career he was retained in an important case which took him to Belgium, and the success he achieved in that employment was the foundation of his reputation as an admiralty lawyer. Afterward he was in partnership with Oscar Smedberg. In 1869 he took the vacant place of Honorable Samuel Blatchford in the firm of Blatchford, Seward & Griswold, in association with Clarence A. Seward and Burr W. Griswold. In this connection he became charged with the interests of great banking institutions, foreign and domestic, and of railway and other corporations, in litigations of gravity and magnitude. He was a very accomplished scholar, took a lively interest in social and educational matters, and was one of the trustees of Columbia College, a lecturer in its law school, and left to the college a magnificent bequest. He was an original member of the Association of the Bar. His friend, Justice Edward Patterson, in a sketch of him in the "Memorial Book" of the Bar Association, speaks thus of his professional characteristics:

As a lawyer Mr. Da Costa was conspicuous for his learning, sagacity and practical wisdom; as an advocate he was forcible, persuasive, and singularly able in the statement of a case. While from the necessities of his large practice he kept himself well acquainted with the current decisions of the courts, he was not a mere case lawyer. He was one of those who verified the saying of Sir Thomas Browne that "he can do most with books who can do much without them." His arguments were founded upon a ripe knowledge of the principles and philosophy of the law, a clear insight into the just relation and bearing of things, an abounding common sense and well-balanced judgment; and his methods were those of an accomplished artist. He was accurate in discriminating as to precedents, and was not content to rest his case on seeming resemblance of authorities. He had what is called the legal instinct. He saw at once all that was involved as the essence of a cause. The keenness of his mental vision was remarkable, and all that he saw fell into an orderly and methodical arrangement and was produced conscientiously, logically, and with completeness not overburdened with superfluity or useless elaboration, and in a manner plain, concise, direct, and clear as crystal. To this were added graces of style and manner peculiar to himself, a soft and pleasing voice, a sunny cheerfulness, a never-failing courtesy. As was said of him in another place, his presence in a cause was always welcome. He had the absolute confidence of the court, and he was regarded by both bench and bar as one of the ablest, most upright, and honorable of the leading members of the profession.



**DAVENPORT, JOHN ALFRED** (born in Francestown, New Hampshire, February 7, 1840; died in Cincinnati, Ohio, May 3, 1890), was descended from a distinguished New England family.<sup>1</sup> He was graduated from Yale College in 1861, and for about four years was professor of mathematics in the United States Naval Academy at Newport, Rhode Island. Afterward he made a thorough study of the law at Harvard and at Heidelberg University, Germany, and in 1870 he became one of the law firm of Gray & Davenport in New York. After its dissolution by the elevation of its senior member to the bench of the Court of Appeals (1888) he organized the firm of Davenport, Smith & Perkins. He was regarded as one of the foremost in the profession as a chamber counsel, but his sensitive nature and feeble health prevented him from taking a prominent place as an advocate.



**DAVIES, HENRY EBENEZER** (born in Black Lake, Saint Lawrence county, New York, February 8, 1805; died in New York City, December 17, 1881), was the son of Thomas John Davies and Ruth Foote, and was the fifth in descent from the American ancestor, John Davies, who came to America and settled in Litchfield, Connecticut, in 1735. His English ancestry goes back to Robert Davies, of Gwysany Castle in the parish of Mold, Flintshire, England (born 1606), a staunch loyalist, high sheriff of Flintshire, and knight of the Royal Oak, who derived an unbroken descent from the famed Cymric Efell, lord of Eylwys Eyle, who lived A.D. 1200, and was seventh in descent from Rodic Maur. His American ancestor brought him considerable possessions and soon acquired large landed interests, was an ardent churchman, established the first episcopal society in Litchfield, and was a leader in the affairs of the colony. Subsequently, during the war of the Revolution, the political and religious faith of the Davies family entailed disastrous consequences upon its members, wresting from them their large holdings, and leaving both the grandfather and father of Henry Ebenezer Davies entirely dependent upon their own exertions. His father, meeting with business reverses, in 1799 removed to the shore of Black Lake, then an unbroken wilderness, built a log cabin with a camp of Indians for his sole neighbors, and commenced life over again. A thriving and populous community rapidly grew about him, the point proving favorable for immigration, and he soon became not only comfortably situated, but prominent in the affairs of the community.<sup>2</sup> He was for ten years sheriff of Saint Lawrence county and for several years served as county judge.

Such was the early environment of Henry Ebenezer Davies, fourth

<sup>1</sup> His American ancestor was Reverend John Davenport, who came to this country in 1638, and was eminent in the congregational denomination of Connecticut. Another of his ancestors was Judge Abraham Davenport, a member of the Connecticut legislature for over twenty-

five years, and judge of probate and of the county and Common Pleas courts. His great-grandfather, John Davenport, was a representative in congress from 1799 for eighteen years.

child and third son. Up to fourteen years of age he followed the ordinary pursuits of a country life full of rugged sport and farm work, varied by such attendance at common school as the neighborhood permitted. An intimate companion was a young Indian boy from whom he learned much of the language and customs of that people. At the age of fourteen his father placed him with the family of Judge Alfred Conkling, of Canandaigua, New York, to obtain a broader education than the facilities nearer home afforded, and specially to prepare him for his chosen profession of the law. With Judge Conkling he not only completed his preparatory legal education, but pursued substantially the course afforded by the college of the day. Coming of age he was admitted to the bar at Albany in April, 1826. He commenced practice in Buffalo, then a small village on the western frontier. A case involving the right of way along the river bank soon arose, which gave him his initial start. The contention was between the owners of uplands along Niagara river, who claimed the right to extend their warehouses to the river's edge for convenience in loading and unloading vessels, and the other inhabitants who claimed a right of way along the bank. Mr. Davies, retained on the popular side, sought to establish the latter claim by the testimony of the older inhabitants and of Indians who still remained in the vicinity. He summoned among others the celebrated Seneca chief, Red Jacket. His array of testimony won the jury and the case. This victory gave him immediate high professional standing and made him city attorney the following year. In 1829 he removed to New York City, entering into partnership with his uncle, Samuel A. Foote.

Among other large corporations which this firm represented was the Erie Railroad Company. To the advice of Foote & Davies was due largely the successful progress and completion of a work stupendous, for that early period, in railroad construction. Upon the retirement of his uncle from active practice in 1848 he entered into partnership with Honorable William Kent, a son of the distinguished chancellor and an ex-judge of the Supreme Court. In this connection he continued until 1853, when he formed the firm of Davies & Scudder, with Mr. James C. Carter as managing clerk. When Mr. Davies became a justice of the Supreme Court two years later the firm of Scudder & Carter succeeded to his business.

In politics Mr. Davies was a whig, with a high reputation as a platform orator. In 1840 he was elected assistant-alderman for the 15th ward and two years later was chosen alderman. He was also at this time chairman of the committee on the celebration of the introduction of the Croton water into the city.

From 1850 to 1853 was a period of laborious activity for Mr. Davies. He was then corporation counsel, and the enormous work involved in the opening of new streets demanded by the rapid growth of the city almost constantly occupied him. His successful defence of



ex-Mayor Cornelius W. Lawrence in suits for recovery of damages brought for blowing up buildings in the path of the disastrous fire of December, 1835, to stay the conflagration, was also among his important professional labors during this period. Soon after, in addition to his professional work, he contributed a compilation of the statutes of the state relating to the City of New York and its ancient and modern charters at the request of the common council of New York.

In the summer of 1855 Mr. Davies made the tour of Europe in company with ex-President Fillmore, with whom he had formed an intimate acquaintance in his early practice at Buffalo. On his return he was elected justice of the Supreme Court, to fill the vacancy made by the death of Judge R. H. Morris. His seat was contested on the ground that no notice of the vacancy had been filed with the sheriff by the secretary of state. Mr. Davies was eventually confirmed in his position by the Court of Appeals. During his term of office occurred the celebrated murder trials of Cancemi and Burdell, at which he presided. He also reaffirmed in the general term the decision of Mr. Justice Paine in the case of *Lemmon vs. the People*, which maintained the position that persons held in slavery became free when brought into the State of New York, and in which Chester A. Arthur, then a fledgling practitioner, was one of the counsel for the slaves.

In the panic of 1857, when the banks of New York City were obliged to suspend specie payments and were in imminent peril of being placed in the hands of receivers on the ground of insolvency, Judge Davies called a meeting of the judges of the Supreme Court of the 1st and 2d judicial districts. At this meeting it was determined that a bank should be considered solvent which was able to pay all its debts, although it might have suspended specie payments for a time, and that when thus solvent, while its officers were acting in good faith, no receiver should be appointed.<sup>1</sup> This averted the danger and saved the entire financial community from utter prostration.

In 1859 he was elected to the Court of Appeals for a term of eight years, during the last two years of which he served as chief-judge. Among the volumes of decisions rendered during this period may briefly be mentioned *Kortright vs. Cady*,<sup>2</sup> maintaining that the tender of the amount due on a mortgage destroys the lien of the instrument; the *People vs. the Canal Appraisers*,<sup>3</sup> where the subject of navigable streams is elaborately and learnedly discussed and determined; *Delafield vs. Parish*,<sup>4</sup> discussing testamentary capacity; and that product of great research and exhaustive study, the opinion in the case of the *Metropolitan Bank vs. Van Dyck*,<sup>5</sup> which sustained the legal tender acts of the general government.

At the expiration of his office Judge Davies was offered a renomination by both parties, which would have resulted in a unanimous

<sup>1</sup> 5 Abbott's Pr. R., 343.

<sup>2</sup> 21 New York, 343.

<sup>3</sup> 33 New York, 461.

<sup>4</sup> 25 New York, 9.

<sup>5</sup> 27 New York, 400.

election, but returned to the practice of law in New York City, having as partners Judge Noah Davis, until the election of the latter to the Supreme Court in 1872, and his son, Julien Tappan Davies. Mr. Davies was counsel for the Mutual Life Insurance Company, as also for other large corporations, but devoted himself mainly to chamber practice and to service as referee. His devotion to his profession was such that up to the day before his last illness he sat for many hours as one of the commissioners appointed to investigate the practicability of constructing the Broadway arcade railroad.

Judge Davies was a director of the Institution for the Instruction of the Deaf and Dumb for a long period. The last year of his life he acted as president. In 1870 he accepted the office of dean of the law school of the University of the City of New York, which he held until the time of his death. This university conferred upon him the title of LL.D., as did also Amherst College.

On July 11, 1835, he married Rebecca Waldo Tappan, of Boston, Massachusetts, and he was father of a large family. He died in the City of New York, December 17, 1881, and left four sons and two daughters surviving him.

The tribute of one who knew him best says :

Judge Davies was conspicuous during his long and busy life for sterling integrity and devotion to the interests committed to his charge. His capacity for labor was prodigious and sustained by a constitution of iron that gave him enormous powers of endurance. He was genial in manner and friendly with all men. His sole pleasure was the professional one of a game of whist. Temperate, indeed almost abstemious in his habits, simple in his tastes, earnest in his professional duties, the two leading motives of his life were devotion to duty and love of his family. True to the church of his ancestry, and following in their lead, he gave to Saint Luke's church, at Matteawan, in Dutchess county, the land upon which its edifice is erected. Under the shadow of its eaves he rests—wife, children, and grandchildren reposing around him. The memory of his pure, strong, loving spirit is the most precious heritage of his living descendants.



AYAN, Charles (born in Amsterdam, New York, July 16, 1792; died in Lowville, New York, December 25, 1877), was the son of a farmer, and after receiving an elementary education taught school and studied law, being admitted to practice at Lowville. He was prominent among the lawyers of that part of the state, and also was active in politics. He served in the state senate from 1827 to 1829, becoming its president, acting lieutenant-governor, and *ex officio* president of the Court of Errors. He was a democratic member of congress, 1831-33, a member of the assembly, 1835-36, and district-attorney of Lewis county, 1840-45.



EAN, AMOS (born in Barnard, Vermont, February 16, 1803; died January 26, 1868), was graduated at Union College and upon his admission to the bar entered into a legal copartnership with Azor Tabor. He gained a very distinguished reputation equally as an advocate, a consulting lawyer, a law writer and a lecturer on law and promoter of legal education. His legal works, which are of high authority, include a "Manual of Law" (1838), "Medical Jurisprudence" (1854), and "Bryant and Stratton's Commercial Law." Among his other works of importance are "Lectures on Phrenology" (1835), "Philosophy of Human Life" (1839) and an uncompleted "History of Civilization" (7 vols., Albany, 1869-70). He was the founder of the Young Men's Association of Albany, filled the chair of medical jurisprudence in the Albany Medical School from its organization in 1839, and was one of the original professors in the Albany Law School.

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EAN, GILBERT (born in Pleasant Valley, Dutchess county, New York, August 14, 1819; died in Poughkeepsie, October 12, 1870), was graduated in 1841 at Yale College and was admitted to the bar in Connecticut and later (1844) in New York. He practiced for a number of years in Poughkeepsie, during which time he served a term in congress (1851-53). Re-elected to that body, he resigned to become a justice of the Supreme Court of the state by the appointment of the governor in 1854. His service on the bench was brief, but during the latter part of it he acted as a judge of the Court of Appeals. He retired in 1855 and removed to New York, where he practiced law for the remainder of his active life.

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ELAFIELD, LEWIS LIVINGSTON (born in New York City, November 3, 1834; died there, March 28, 1883), was descended from ancestors distinguished in the annals of the state and the country. Among them were William Smith, judge of the Province of New York; Francis Lewis, one of the signers of the declaration of independence; Morgan Lewis, chief-justice and governor of New York; Chancellor Livingston, and Edward Livingston, author of the code of Louisiana. He received a careful preparatory education, and in 1855 was graduated from Columbia College second in his class. He immediately entered upon the study of the law in the office of his kinsman, Alexander Hamilton, Junior, and was admitted to the bar December 18, 1857. He first practiced as a member of the firm of Crane, Robinson & Delafield, but separated from it and practiced alone until his death. He soon acquired a valuable practice, and became specially versed in the law of real estate, of trusts and of wills, one of the earlier cases in which he acted as junior counsel being the famous

Parish will case. In later years he was the counsel of numerous large corporations. In behalf of one of these, the Roosevelt Hospital, he succeeded in forever delivering the City of New York from those dangerous nuisances, the abattoirs. In 1874 he was selected as attorney to the United States Cable Company, and in 1879 as attorney to the French Cable Company.

Mr. Delafield was a man of high character, energetic, public spirited, and devoted to good causes. He never accepted public office, but in the last years of his life was almost constantly prominent before the public. He was one of the founders of the Association of the Bar of the City of New York, and took a conspicuous part in some of its notable undertakings and proceedings. He co-operated heartily and influentially in the anti-Tweed crusade and the movement of the Bar Association for the removal of the corrupt judges. Afterward he was a leader in the crusade inaugurated by the association for the reform of notorious abuses in the city offices, and on its behalf delivered a noteworthy address to the committee of the legislature which had in charge the bill for the abolition of the fee system. He was chairman of the Bar Association's committee on law reporting, and wrote the exhaustive report of that committee exposing the prevalent defects in law reports and suggesting a scheme for an official "council of law reporting." Although the project was not adopted, the decided improvement in the reports that have since been observable are in large measure the direct result of his efforts. He was also chairman of the association's committee on admissions to the bar, and to the clearness and vigor with which he presented his views to the courts and the legislature the adoption of reformed standards for admission was in great part due.

He was earnestly interested in the cause of preventing cruelty to children, and was counsel to the society organized for that purpose. He conducted the prosecution of the padrone Ancorata, which resulted in putting a stop to the barbarous traffic in Italian children; and he prosecuted successfully the infamous Reverend Edward Cowley, of the "Shepherd's Fold." He compiled a volume of laws relating to children.



DE LANCEY, JAMES (born in New York City, November 27, 1703; died there, July 30, 1760), was the eldest son of Etienne De Lancey, who fled from France to Holland after the revocation of the edict of Nantes, and in 1686 emigrated to America.<sup>1</sup> He was given an excellent education by his father, being

<sup>1</sup> Etienne (Stephen) De Lancey was one of the most notable New Yorkers of his period. He brought with him to America a portion of the family jewels, and with the proceeds of their sale embarked in mercantile enterprises, in which he amassed a fortune of £100,000. He married a daughter of Stephanus Van Cortlandt, was

prominent in city and colonial affairs, and was a very public-spirited citizen. His old house, built in 1780, afterward became Fraunce's tavern, a famous resort of the latter part of the century, in which Washington bade farewell to his officers. j





By the Honourable  
**JAMES DE LANCEY**, Esq;  
*His Majesty's Lieutenant-Governor and Commander in Chief, in and  
 over the Province of New-York, and the Territories depending thereon  
 in America.*

## A Proclamation.

**W**HEREAS it appears, That certain Persons residing on or near the Eastern Borders of this Province, have entered into a Combination to dispossess *Robert Livingston, jun. Esq;* Proprietor of the *Manor of Livingston*, within this Province, and the Tenants holding under him, of the Lands comprised within the said Manor, under Pretence of Title from the Government of the *Massachusetts Bay*, as also of an Indian Purchase lately made by the said Persons; altho' it is most notorious that the said Manor hath, till very lately, been peaceably held and enjoyed by the said *Robert Livingston*, and his Ancestors, for Seventy Years last past: ~~For many Years before the said Claim was made by the said Persons, and that the said Persons, which only he corrected~~ Notwithstanding which clear and manifest Right on the Part of this Government, the said Persons, not content with their former Intrusions on His Majesty's Lands within the same, first began to carry their Designs into Execution, by endeavouring to corrupt and turn Mr. *Livingston's* own Tenants against him, in which they to far succeeded, that several Persons, who 'til within a few Years held Lands as Tenants under, and paid their Rents to him, now keep Possession of the Lands in Disobedience of, and set up a pretended Right against him, under the Government of the *Massachusetts Bay*, and the aforementioned Indian Purchase; by which illegal Proceedings, supported with force, the Course of Justice hath been obstructed, the Lives of several of his Majesty's Subjects lost, and private Property wronged and greatly injured. And Whereas Thirty One of such evil minded Persons, in order to prosecute their unjust Designs, on the 7th Day of May last, armed and riotously assembled themselves at *Tackhannick*, at the House of *Jonathan Darbie*, which stand at the Distance of not more than Eighteen Miles from *Hudson's River*, among whom were the said *Jonathan Darbie*, also *Johannes Resse*, *Hendrick Brusse*, *Joseph Vangelder*, and his Brother, said to be *Andries Vangelder*, *Samuel Taylor*, *Ebenezer Taylor*, and *Andries J. Resse*, and being so riotously assembled, were commanded to disperse by the Deputy Sheriff of the County, in the Presence of one of His Majesty's Justices of the Peace, two Constables, and other Persons who came thither with the said *Robert Livingston*, to suppress the Riot, and disperse the Rioters; four only of whom went off, the others shutting themselves up in the said *Darbie's* House, in which there were Loop Holes, fired through the same, and before they dispersed, several were wounded on both Sides, one of whom died in about an Hour thereafter, and another soon Time after, of the Wounds they then received. IN ORDER therefore to put a Stop as much as may be to Proceedings, the Consequences whereof have already been fatal to some, and which if not timely prevented, may still be productive of the worst Evils to others; and to establish and keep up Peace and a good Understanding among the Borderers, till this unhappy Controversy shall be settled in a legal Court: I HAVE thought fit, with the Advice of His Majesty's Council, to issue this Proclamation, hereby in His Majesty's Name, strictly enjoining all His Majesty's good Subjects in this Province, to forbear and refrain from such violent and unjust Proceedings, as every Instance of that Nature will be punished with the utmost Rigour of the Law. AND that the Offenders before named may be brought to Justice, the Sheriffs of the Counties of *Albany* and *Dutchess*, and all other Officers therein, are hereby commanded and required to apprehend the said *Jonathan Darbie*, *Johannes Resse*, *Hendrick Brusse*, *Joseph Vangelder*, *Samuel Taylor*, *Ebenezer Taylor*, and *Andries J. Resse*, and all and every of their Associates, who shall appear to have been aiding or abetting the said Offenders in the Riot aforesaid; and them and every of them to keep, or cause to be committed, in safe Custody, in the County Goal, until delivered by due Course of Law: And in like Manner, to apprehend and keep in safe Custody all and every other Person and Persons who shall hereafter be guilty of such riotous and illegal Practices. And all His Majesty's Subjects in the said Counties of *Albany* and *Dutchess*, are to give due Assistance to the said Sheriffs within their respective Counties, who are hereby empowered and required, if necessary, to summon the posse comitatus, or whole Power of the County, for putting the Premises into Execution.

*GIVEN under my Hand and Seal at Arms, at Fort-George, in the City of New-York, the Eighth Day of June, One Thousand Seven Hundred and Fifty Seven, in the Thirtieth Year of the Reign of our Sovereign Lord GEORGE the Second, by the Grace of GOD, of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth.*

By His Honour's Command,  
*Gw. Baryar*, Dep. Secy

**JAMES DE LANCEY.**

# G O D Save the K I N G.

graduated from Corpus Christi College, Cambridge, England. He pursued legal studies in the Inner Temple, London, was admitted to the bar, and in 1725 returned to New York. In 1729 he became a member of the council. He was the chief framer of the Montgomerie charter of 1730, and in recognition of his services he was presented with the freedom of the city, being the first person to enjoy this distinction. In 1731 he received the appointment of judge of the Supreme Court, and two

*James De Lancey*

years later (September 14, 1744) was appointed chief-justice to succeed Lewis Morris, removed. In this office he continued until his death. In addition to the dignity of chief-justice, he was made lieutenant-governor, the king's commission bearing date October 27, 1747. But having become involved in a quarrel with Governor Clinton, the latter withheld the commission and urged his removal as chief-justice. The



DE LANCEY ARMS.

home government, however, refused to comply with this recommendation, and in 1753, Clinton having been superseded, the commission was finally delivered to him and he became acting governor. He presided over the deliberations of the colonial congress of 1754 (the first general congress of the colonies), held to consider methods of common defence against the French and to conciliate the Indians.

While acting as governor he granted the charter of King's College, now Columbia College (October 31, 1754). Being relieved of the duties of governor by the arrival of Sir Charles Hardy, who had been appointed to that office (1755), he devoted himself for a time entirely to his judicial functions, but from 1757 until his death he again exercised the powers of governor. As chief-justice and governor he left a high reputation for learning and ability.

Judge Charles P. Daly has written the following estimate of Chief-Justice De Lancey: <sup>1</sup>

In legal learning he was inferior to several prominent lawyers of the time, but he had remarkable natural abilities, upon which he depended, as he read but little, and was very averse to writing. Upon the bench he applied himself closely to the matter before him, and having a very retentive memory, acute perception and a sound judgment, he was enabled to dispose of elaborate cases with great readiness, and to the general satisfaction of the bar. Whatever he had read or had acquired in the way of legal learning, in the course of his experience, he could produce upon the instant. Having all his knowledge thus promptly at command, and with a mind so constituted that it lost its force or its grasp of a subject in proportion as he delayed to deliberate, he was generally ready to act at once: his first thoughts being always the best, expressing himself, whether from the bench or in the halls of legislation, with clearness, brevity, and point. As a political manager he was intrepid, prompt and sagacious, fertile in expedients: in critical emergencies baffling his opponents, and attaining his end with consummate tact and judgment.

In public contests he was a master of the arts that win popularity, and as a

<sup>1</sup> "Historical Sketch of the Judicial Tribunals of New York," p. 49.

ruler, equally a master of the more difficult art of retaining it: for though a strong conservative in his politics, and generally opposed to the popular party, no man in the colony ever worked himself so fully into the public confidence, or had the same amount of personal influence. He is described by his contemporaries as remarkable for his convivial qualities, as easy of access, assiduous in the dispatch of public business and steadfast in his friendships. It is to be regretted that he marred his otherwise irreproachable conduct on the bench by giving way, in political cases like that of Zenger, to the feelings of a partisan; and, involved as he was throughout his long career in every political intrigue and party movement, his character, in other respects, has not escaped without reproach. But he was a man of more integrity than he received credit for during life; and when the government was entrusted to his hands, he administered it with so much capacity, and with so single an eye to the general welfare of the province, as to wring a reluctant tribute from his enemies.

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**E LANCEY, JOHN** (born in New York City about 1741; died there in 1821), was a son of Peter De Lancey, a nephew of the chief-justice and a brother of James De Lancey, the celebrated loyalist colonel of the Revolution. He engaged in the profession of the law and held various offices: high sheriff of Westchester county in 1769; member of the assembly from 1768 to 1772, and again from 1793 to 1795, and member of the first provincial council for the City of New York (1775-76). He was also a member of the general committee of one hundred of May, 1776. Unlike his brothers, he did not come into disfavor on account of attachment to the loyalist cause.

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**E LANCEY, STEPHEN** (born in New York City about 1740; died in Annapolis, Nova Scotia, in 1801), was a brother of the preceding. He was admitted to the bar, and in 1765 became clerk of the city and county of Albany, then embracing all the territory west of the Hudson and north of Ulster county. He afterward served as recorder of the city of Albany and as a commissioner to treat with the Indians. From the beginning of the revolutionary troubles he was a loyalist. In 1775 he was connected with the Albany committee of safety. In 1776 he was imprisoned at Hartford, Connecticut, for disaffection, but was liberated soon after, when he went to New York City. There he remained until the British evacuation in 1783. Removing to Nova Scotia, he was prominent in that colony, serving as a member of the council.

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**ELAPLAINE, ISAAC CLASON** (born in New York City, October 27, 1817; died there July 17, 1866), was a brother of John Ferris Delaplaine, a well-known citizen of New York, whose will, endowing a Delaplaine Institute for the relief of the friendless, was the subject of a recent interesting legal

controversy. He was graduated from Columbia College in 1834 and became a successful practitioner at the New York bar. He served in congress from 1861 to 1863.



ENIO, HIRAM (born in Rome, New York, May 21, 1799; died in Utica, November 5, 1871), was a law student in the office of Judge Hathaway at Rome, and afterward in the office of Storrs & White at Whitesboro. In 1821 he entered into a professional copartnership with Wheeler Barnes at Rome. He was appointed district-attorney of the county to succeed Samuel Beardsley, and continued in that office for a number of years, manifesting signal ability in the discharge of its duties. Removing to Utica, he established a law firm there with E. A. Wetmore. In 1834 he was appointed circuit judge for the 5th circuit. In 1836 he formed an association with Ward Hunt. He was appointed a judge of the Court of Appeals in 1853 to fill a vacancy, and was twice successively elected to that office, retiring in 1866. Beside the positions enumerated, he served as a bank commissioner and clerk of the Supreme Court, and he was a trustee of Hamilton College. In politics he was a democrat, in 1860 he voted for Lincoln, and during the war was in full sympathy with the policy of the government. In 1868 he was stricken with paralysis, from the effects of which he never recovered.

Hiram Denio belongs in the foremost rank of the eminent judges of New York, and his opinions are frequently quoted. In addition to great legal learning he possessed the soundest judgment. His personal character was remarkably pure, benevolent, and upright.

In conjunction with William Tracy he edited an edition of the revised statutes of New York (2 vols., 1852), and he published five volumes of "Reports of Cases Argued and Determined in the Supreme Court and in the Court for the Correction of Errors" (1845-48).



PEYSTER, ABRAHAM (born in New York City—then New Amsterdam—July 8, 1657; died there, August 2, 1728), was a son of Johannis de Peyster, founder of the family in America. (For a sketch of the de Peyster family from Johannis down, see the biography of Frederic de Peyster.) He held successively the offices of alderman in 1685, mayor from 1691 to 1695, judge of the Supreme Court and chief-justice of that tribunal in 1700, member of the king's council from 1698 to 1702, and presiding officer of the council and governor of the province in 1701. He was also colonel commanding the militia of the City and County of New York, a troop consisting of one company of horse and eight companies of infantry, with a total of 685 men. For twenty years from 1706 he was treasurer

*Johannis de Peyster*



of the Provinces of New York and New Jersey. He was the most intimate friend of Richard Coote, Earl of Bellmont, New York's best colonial governor, and he was also a friend of William Penn, proprietor of Pennsylvania, who in one of his letters alludes to the fascination of his social qualities and humor.

He was a man of wealth and figured very prominently in the important events of his times. According to Martha J. Lamb, the first impulse of real municipal progress and improvement in New York City was due to his public spirit. He personally—or in conjunction with Colonel Nicholas Bayard—presented to the city the site of the original city hall, at the head of Broad street, where stands the present United States sub-treasury building, and where Washington was inaugurated. He built the first private mansion house in Queen's—now Pearl—street, opposite Cedar, to which the present De Peyster street served as the carriage-way communicating with the stables.



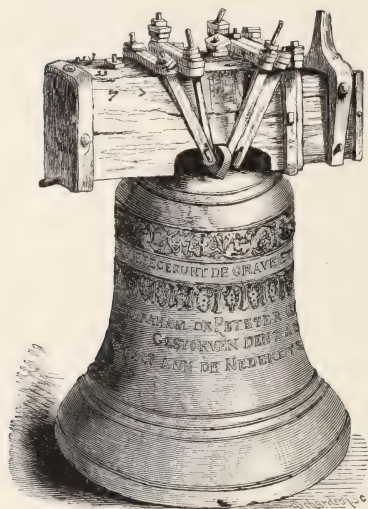
DE PEYSTER ARMS.



THE PEYSTER, FREDERIC, a man who exerted command and influence through innate although not outwardly perceptible winning and governing characteristics,<sup>1</sup> was born in New York City, November 11, 1796. He was the third son of Frederic de Peyster and Helen Hake. His lineage on this continent "runs back for more than two and a half centuries to the dawn of Dutch dominion over Manhattan; his name descending through six generations from father to son, each a leader of men in his day, and charged with civic trusts when public life meant honorable fame." The founder of the family in America, Johannis de Peyster, came to New Amsterdam in 1645. He and his wife, Cornelia Lubberts, were natives of Haarlem, Holland, where the de Peysters, descendants of a Huguenot family of Tours, in France, the original seat of the Huguenots, took refuge soon after the massacre of St. Bartholomew, in 1572. Between 1655 and 1677 he held the offices of schepen, burgomaster, alderman, and deputy mayor, and was one of the memorable "committee of defence," in 1673, to protect New Amsterdam against the English. He declined the appointment of mayor under the English in 1677 because of his imperfect acquaintance with English, although the first English governor declared "he could make a better platform speech than any other man outside of Parliament." His son, Abraham de Peyster, (born in New York, July 8, 1657), held the offices of alderman of New York in 1685; mayor from 1691 to 1695; member and presiding officer of the king's council; acting governor in 1701; chief-justice of the Supreme Court in 1700; treasurer of the provinces of New York and New

<sup>1</sup> Professor Dissler of Columbia College, now University, being requested to write an epitaph for Mr. de Peyster, suggested the words, *Vir Auctoritatis*, which are inscribed on his tombstone.

Jersey from 1706 to 1721, and colonel commanding the regiment of New York City militia, or train-bands, horse and foot. He was the intimate friend of the earl of Bellomont, governor of New York, and of William Penn, proprietor of Pennsylvania, who marked especially his amiable character. Abraham de Peyster, second, eldest son of the preceding, succeeded his father as treasurer of New York and New Jersey and held a similar high social position in the colony. His marriage to the eldest daughter of Jacobus Van Cortland introduced another famous family into the line. The direct line continues through



DUTCH CHURCH BELL, 1731.  
(Given by Colonel Abraham de Peyster.)

James de Peyster, eldest son of Abraham, second, who married a daughter of Joseph Reade, member of the king's council, and whose third son (the two elder sons dying without male issue), became the head of the house, and was the father of Frederic de Peyster. Helen Hake, his mother, was the only daughter of Commissary-General Samuel Hake of the British army, and Helen Livingston, eldest daughter of Robert Gilbert Livingston, and great granddaughter of the first lord of Livingston manor.

Frederic de Peyster was born in the town house of his parents, on Hanover square, at that time one of the most fashionable quarters of New York. He was educated with a care commensurate with the

importance of the historic family name, being placed at an early age under the tutelage of Doctor Chase (then principal of a grammar school in Poughkeepsie, New York, and afterward episcopal bishop of Ohio). He was subsequently placed under the instruction of Mr. Findlay, of Newark, New Jersey; prepared for college under Doctor Eigenbrodt, at Union Hall; and entered in 1812 Columbia College, from which he graduated in 1816, with high honors, in a class marked for its scholarship and ability. He early developed a talent for distinctively literary pursuits, notably taking lead in exercises of this nature while in college; but after graduation, having chosen law, he commenced legal studies under honorable Peter Augustus, eldest son of the distinguished John Jay. He was also a student under Peter

Van Schaack, one of the leading jurists of that day. He was admitted to practice in the Supreme Court of New York in 1819, and entering actively upon his profession devoted himself exclusively to chancery cases. His signal ability and success won immediate attention, insomuch that in the following year, 1820, by appointment of Governor De Witt Clinton, he was made a master in chancery. He held this office by successive appointments until 1837, a period of seventeen years, during which he won an enviable reputation by his careful and exhaustive research in determining cases, his decisions receiving well-nigh universal endorsement by the higher tribunals, not one of his decrees, it is said, having been reversed on appeal.

Retiring from professional and official duties, Mr. de Peyster gave his attention more directly to the historical studies and philanthropic enterprises to which his natural inclinations urged him, bringing to his historical investigations a perfect mastery of the subject, and to his treatment a pleasing literary style and an accurate, logical and scholarly method. His chief historical studies include: "The Moral and Intellectual Influence of Libraries" (1866); "William the Third as a Reformer" (1874); "The Representative Men of the English Revolution" (1876); "The Life and Administration of the Earl of Bellomont" (1879); "The Culture demanded by the Age" (1869); "Early Political History of New York" (1865). He also left in manuscript a work (intended as a companion treatise to that on Bellomont) on Governor Fletcher, which his only child, General John Watts de Peyster, put in print and edited as far as it was possible to epitomize and reduce to reasonable dimensions the enormous amount of valuable information left in loose undigested notes by his father.

His publications gained for him honorable distinction abroad. In 1877 he was elected an honorary fellow of the Royal Historical Society of Great Britain, an honor shared with Ruskin, Froude, Earl Russell, Sir John Lubbock, and many others. He was president of the New York Historical Society at the time of his death. The historian, George Bancroft, at one time secretary of the society, said of Mr. de Peyster: "No man living has done more than he, first to restore life to the society when it had fallen into a state of languor and decay, and then by persistent zeal to raise it from the condition of feebleness to established and ever increasing prosperity."

Mr. de Peyster was likewise honorary member of the Massachusetts, Maryland, Pennsylvania, Wisconsin, Florida, Buffalo, and Chicago historical societies, and corresponding member of the New England Historic-Genealogical Society.

Mr. de Peyster's aptitudes were many sided. Early, while yet a student in Columbia College, he was elected commander of an organization among the students for active service in event of an invasion of New York during the war of 1812. In co-operation with the defensive forces under General Jonas Mapes, his command "assisted in the con-

struction of fieldworks thrown up to defend McGowan's Pass, which constituted a portion of the line of entrenchments that extended from the Harlem to the North river." He also interested himself in the state militia; was commissioned captain in the 115th regiment; in 1825 became an aide on the staff of Brigadier-General Fleming; and eventually was appointed aide on the staff of Governor De Witt Clinton, as well as military secretary to that executive for the southern district of New York, an office of great importance at the time.

His interest in religious, educational and philanthropic institutions marked another conspicuous side of his character. He was vice-president, and one of the original incorporators, of the New York Society for the Prevention of Cruelty to Children; a member for more than forty years, and on the board of managers, of the New York Bible Society; a member of the board of the New York Institution for the Deaf and Dumb; a manager and chairman of the finance and building committee of the Home for Incurables; clerk of the board of trustees of the Leake and Watts Orphan House for fifty years; and a member of many other organizations.

He died August 17, 1882, aged nearly eighty-six years. The tributes of the press were numerous and unusually significant. Said one: "He has probably been connected as an active officer with more social, literary and benevolent societies than any other New Yorker who ever lived." Another characterized him as one "who, without ever having held any city office, has been for half a century one of the most valued and one of the best known public men in this city." Still another wrote: "The better part of his eighty-six years of life were made memorable by good service to the community in which his ancestors had dwelt for more than two hundred years."



E SILLE, NICASIU. See SILLE, NICASIUS DE.



DICKERSON, EDWARD N. (born in Paterson, New Jersey, February 11, 1824; died in Far Rockaway, Long Island, December 12, 1889), was a son of Philemon Dickerson, an eminent New Jersey lawyer, judge, and statesman.<sup>1</sup> His mother

<sup>1</sup> Philemon Dickerson was graduated at Princeton, engaged in the practice of law at Paterson, was elected to congress in 1833, became governor and chancellor in 1836, was again elected to congress, and upon his retirement from that body was appointed United States judge of the District Court of New Jersey, filling that office with distinction until his death. His brother, Mahlon, became a prominent lawyer of Philadelphia and quartermaster-general of Pennsylvania, and returning to New Jersey was elected governor and served as United States senator for sixteen years, afterward holding the portfolio of secretary of the navy under President Jack-

son. The founder of the Dickerson family in America, Philemon, emigrated from England early in the seventeenth century, and was one of the first puritan settlers of Massachusetts, being a freeholder in Salem in 1638. Peter, one of his descendants, was the owner of the Dickerson iron mines in New Jersey in 1741, speaker of the assembly, and a patriot in the Revolution. Peter's son, Jonathan (grandfather of Edward N.), was a man of remarkable mechanical and scientific ability, and was the grantee of the eleventh patent recorded in the United States patent office. He served in congress and exercised great influence in New Jersey.



was a daughter of Captain John Stotesbury, an officer in the Revolution, who participated in many important battles. He was educated at Princeton College, where he began, under the distinguished Professor Joseph Henry, the scientific studies which afterward afforded him his unequalled equipment as a patent lawyer. At the age of twenty-one he was admitted to the bar, and he soon attracted attention. His first important case was *How vs. Law*, an action brought under the California mail contract, and soon after he won a victory over Rufus Choate in the Colt patent suit. In other cases, notably that of *Sickles vs. Burden*, he added greatly to his rising reputation. Notwithstanding the brilliant promise of his career at the bar, he decided to abandon his profession for a while and devote himself to travel and scientific researches. He visited many of the countries of Europe and Central and South America, thoroughly familiarizing himself with the most recent inventions and improvements. In 1873 he resumed his legal practice, and until his death he applied himself with untiring zeal and the most signal success to its duties, being recognized by his brethren of the bar as the foremost patent lawyer of the United States. Among the great suits with which he was identified as counsel were those of the American Bell Telephone Company and the National Improvement Telegraph Company, the *Bell against the People's Company*, the *Pan-Electric* cases, and numerous others involving the best-known patents for the telephone, the telegraph, reaping-machines, explosives, railways, refrigerators, ventilating processes, nickel-plating, planing-machines, and guns. In the *Bell-People's* suits the records fill fourteen volumes. Among his clients were the Western Union Telegraph Company, the Gold and Stock Telegraph Company, the Standard Oil Company, the McCormick Mower and Reaper Company, the Bell Telephone Company, and the Edison Electric Company.

To his extraordinary scientific attainments as a patent lawyer Mr. Dickerson added the qualities of unwearying industry and great tenaciousness and aggressiveness. He was never idle. When not engaged in research upon a case, he employed his time in study, ever adding to the range and quality of his knowledge. On the subjects of sanitary plumbing, lighting, ventilation, and heating he was an expert. He was passionately devoted to astronomical science, and on the roof of his residence in Thirty-fourth street near Fifth avenue he built an observatory equipped with the most approved and recent instruments and inventions.

At a meeting of the New York bar, held to take action upon his death, a resolution was adopted in which the following tribute was paid to his professional qualities:

In the special field in which he became distinguished he was noted for his mastery of the principles of law that regulate the rights of those whose labors have done so much to advance the material prosperity of our country; for his accurate, practical acquaintance with every branch of science and of mechanics involved in the

useful arts; as also for his capacity to promote, protect, and defend the interests of inventors. He was thus able to instruct and edify every tribunal before which he appeared, and he deserved and received the full attention and respect of those whose duty it was to decide the controversies in which he took part. Earnest in his convictions, with a great faculty of lucid statement, and persuasive of speech, he enforced his views with an eloquence and power that won him many victories. By these qualities he fulfilled, with singular completeness, the proper function of an advocate. Concerned in many of the most important patent litigations of his day, Mr. Dickerson has left his mark upon that branch of our jurisprudence. He has left it also upon the mechanic arts, in some of which he had made highly useful inventions of his own. He has left it, too, upon many of the sciences which are concerned with the material progress of the age. His proficiency in scientific knowledge made him always a welcome guest among its special professors; for while not himself a specialist, his studies and acquirements embraced the whole field of applied science, and thus he was enabled to impart to others more than he received from them.



DICKINSON, DANIEL STEVENS (born in Goshen, Connecticut, September 11, 1800; died in New York City, April 12, 1866), was educated in the public schools of Guilford, Chango county, New York. Possessing great natural aptitude, he perfected his elementary training by private studies. He applied himself for a while to teaching and surveying, and then prepared himself for the bar, being admitted in 1828. Three years later he removed to Binghamton, where he became prominent in his profession and in politics. His public career began in 1836, when he was elected as a democrat to the state senate. In that body he promptly made himself one of the leaders of his party, being especially conspicuous as a debater. He was the unsuccessful democratic candidate for lieutenant-governor in 1840, but in 1842 he was elected to that office. When his term expired in 1844 he was appointed United States senator by Governor Bouck to fill a vacancy, and subsequently he was chosen for a full term by the legislature. He pursued a conservative course in the senate on the great questions agitating the public mind—the annexation of Texas, the joint occupation of Oregon, the Wilmot proviso and the compromise measures of 1850. He was the author, in 1847, of two resolutions concerning the government of the territories, which embraced the substance of the “popular sovereignty” doctrine of later years. In the democratic national convention of 1852 he was supported by the vote of Virginia for the presidential nomination. His attitude on the important measures of the session of 1850 was highly praised by Daniel Webster, who, in a letter dated September 27, 1850, characterized it as “noble, able, manly and patriotic.” After leaving the senate he was nominated by President Pierce, and confirmed, as collector of the port of New York (1852), but he declined the office.

During the war ex-Senator Dickinson was one of the most earnest and influential supporters of the federal government in the State of New York. In 1861 he was elected attorney-general by a majority in

excess of 100,000. Afterward he declined the office of commissioner to settle the northwestern boundary controversy, to which he had been nominated by President Lincoln; and he also declined an appointment by Governor Fenton as a judge of the Court of Appeals. He accepted, however, the position of United States district-attorney for the southern district of New York, and continued to discharge its duties until his death. He received 150 votes for the vice-presidential nomination in the republican national convention of 1864. His "Life and Works," in two volumes, were published by his brother in 1867.



DIOSY, GEORGE S. (born in 1835; died in Brooklyn, April 27, 1882), was one of the earliest and best law-book publishers in the state, issuing many works of importance. His father, John J. Diossy, was also a leading law-book publisher, well-known to the profession.



DIX, JOHN ADAMS (born in Boscawen, New Hampshire, July 24, 1798; died in New York City, April 21, 1879), was a son of Major Timothy Dix, of the United States infantry. He was educated at Salisbury, Phillips Exeter Academy, the College of Montreal, and Saint Mary's College, Baltimore. He passed his youth and early manhood in the military service. Although but a boy, he was in active duty throughout the war of 1812. He was appointed a cadet in 1812, an ensign in 1813, and in 1814 became a 2d-lieutenant and adjutant to Colonel John De B. Walbeck. After the war he continued in the army, becoming aide-de-camp in 1819 to General John A. Brown, then in command of the northern military department. In 1826 the government dispatched him as a special messenger to the court of Denmark. He was stationed in Fortress Monroe after his return, with the rank of captain, but in consequence of feeble health he soon afterward, in 1828, resigned from the army.

Whilst serving as aide-de-camp to General Brown at Brownsville he had studied law, and continuing his legal studies later under the direction of William West, he was admitted to the bar. Upon his retirement from the military service he engaged in the practice of the legal profession at Cooperstown, New York, whence he removed to Albany to assume the duties of adjutant-general of the state, to which office he had been appointed by Governor Throop. Thenceforward, for many years, he took an active interest in politics and became one of the leading men in the councils of the democratic party and a conspicuous member of the famous "Albany regency." He was appointed secretary of state and superintendent of common schools in 1833, and while holding these offices he manifested a highly intelligent devotion to the educational interests of the state, publishing valuable reports

on the schools, and also (1836) a specially noteworthy report on the New York geological survey. After leaving office, in 1840, he edited for a while the *Northern Light*, a literary and scientific journal. He served a term in the assembly (1842), and then spent two years in foreign travel. Upon his return he was chosen a member of the United States senate, and he served in that body from 1845 to 1849. As a senator he very reluctantly yielded to free-soil influences, which in the circumstances he could not resist. In 1848 he was nominated for governor of New York on the ticket of the free-soil democracy, but was defeated by Hamilton Fish. Under the Pierce administration he was appointed assistant-treasurer at New York.

During the critical ten years that preceded the civil war Mr. Dix remained a democrat of democrats. Even in the presidential campaign of 1860, unlike his old colleague in the United States senate, Daniel S. Dickinson, he recognized no reasons for breaking from the democratic party. He not only vigorously opposed the candidacy of Abraham Lincoln, but supported the ticket of the extreme element of his party, Breckinridge and Lane. At that time he was postmaster of New York, having been appointed to the place by President Buchanan in May, 1860. When the vacancy in the treasury department occurred in the exciting closing months of Buchanan's term, he was selected by the president, upon the strong recommendation of the New York bankers and financiers, to assume that important portfolio, and began his duties as secretary of the treasury January 10, 1861. He immediately manifested uncompromising devotion to the interests of the federal government as against the secessionists. He sent a special agent to New Orleans, Mobile, and Galveston to save, if possible, the revenue cutters stationed at those ports. Being advised that the commander of the *McClelland* at New Orleans had refused to obey his orders, he telegraphed, on January 29, upon his own responsibility and without consulting the president, the following historic dispatch:

TREASURY DEPARTMENT, Jan. 29, 1861.

Tell Lieut. Caldwell to arrest Capt. Breshwood, assume command of the cutter, and obey the order I gave through you. If Capt. Breshwood after arrest undertakes to interfere with the command of the cutter, tell Lieut. Caldwell to consider him as a mutineer & to treat him accordingly. If any one attempts to haul down the American flag, shoot him on the spot.

JOHN A. DIX,  
Secretary of the Treasury.<sup>1</sup>

He was the first president of the Union Defense Committee, organized to sustain President Lincoln's government, presided at the Union square mass-meeting of April 24, 1861, and organized and sent to the field seventeen regiments in response to the president's call for troops. Appointed a major-general of New York volunteers, he was first placed

<sup>1</sup> For an interesting history of this celebrated dispatch, see "Memorial History of New York," Vol. iii., page 180.



in command of the Arlington and Alexandria departments, and then was assigned to the command of the department of Maryland, where he rendered great services. He was transferred in May, 1862, to Fort Monroe, and in the summer of 1863 to the command of the department of the east at New York, in which position he remained to the end of the war.

After the war General Dix was, successively, naval officer of the port of New York, minister to France, and governor of New York (elected in 1872 by a large majority, but defeated by Mr. Tilden upon his candidacy for re-election in 1874).

General Dix was eminent as a lawyer and also in financial and corporate enterprises. He became president of the Mississippi & Missouri Railway Company, was the first president of the Union Pacific Railroad Company (serving from 1863 to 1868), and was for a brief time president the Erie Railway Company (1872). He was an accomplished scholar, linguist, orator, and writer, publishing a "Sketch of the Resources of the City of New York" (1827), "Decisions of the Superintendents of Common Schools" (1837), "A Winter in Madeira and a Summer in Spain and Florence" (1850; 5th ed., 1853), "Speeches and Occasional Addresses" (2 vols., 1864), "*Dies Ira*" (a translation, 1863; republished in 1875), and "*Stabat Mater*" (translation, 1868).

He was prominent in the episcopalian denomination, taking an especial interest in Trinity church (of which his son, Reverend Doctor Morgan Dix, has for many years been pastor). He was one of the most conspicuous and honored citizens of New York. On the occasion of the investigation by the Bar Association of the charges against Charles O'Connor (1876) he was chairman of the inquiry tribunal.



ORSHEIMER, WILLIAM (born in Lyons, New York, February 5, 1832; died in Savannah, Georgia, March 26, 1888), was a son of Philip Dorsheimer, a wealthy resident of Buffalo, who took an active part in the organization of the republican party. He attended Harvard College, and although prevented by ill-health from graduating received later from that institution the degree of M.A. Admitted to the bar in 1854, he practiced his profession in Buffalo with ability and considerable success, meantime manifesting a decided interest in politics, first as a democrat and then as a republican. He served for a brief period in the war as a major on the staff of General Frémont in Missouri, and afterward wrote an account of "General Frémont's Hundred Days in Missouri." He was appointed United States district-attorney for the northern district of New York by President Johnson in 1867, serving until 1871. Having resumed affiliation with the democratic party, he was nominated and elected lieutenant-governor of the state on the ticket with Samuel J. Tilden in 1874. He was twice re-elected, serving until 1880. He was

a commissioner of the state survey (1875) and a commissioner of the state reservation at Niagara (1883). He co-operated heartily and ably with Governor Tilden in his war on the "Canal Ring." In the presidential campaign of 1872 he supported Horace Greeley. At the national democratic convention of 1876 he was very instrumental in bringing about the nomination of Mr. Tilden, and he reported the platform as a member of the committee on resolutions.

Removing to New York City, he was elected to congress in 1882. An early friend of Grover Cleveland, he published a campaign biography of that democratic leader in 1884. In 1885 he was appointed by President Cleveland United States district-attorney for the southern district of New York, but he resigned the office after a year's service, having assumed the editorship of the New York *Daily Star*. In this newspaper enterprise he failed to succeed according to his expectations.

Mr. Dorsheimer was a man of varied attainments, and was long a familiar figure in New York public life. As a lawyer his abilities were well recognized, but his numerous activities in other fields prevented him from gaining the distinction at the bar for which his natural capacities qualified him.



OTY, LOCKWOOD L. (born in Groveland, New York, May 15, 1827; died in Jersey City, New Jersey, January 18, 1870), began the practice of the law in Geneseo, New York, and was prominent at the bar. During the war he was very energetic in obtaining volunteers for the army, served as military secretary to Governor Fenton and was the founder of the state military bureau at Albany. From 1871 until shortly before his death he was pension agent in New York City.



RESSER, HORACE (died January 27, 1877), was graduated at Union College in 1828, and, being admitted to the bar, took an active interest in the cause of the negro, being conspicuous as one of the earliest advocates of escaped slaves in the courts of New York. He was a historical and legal writer. Among his published works are "The Battle Record of the American Revolution" (New York, 1863), and "Internal Revenue Laws as Amended to July, 1866" (New York, 1866).



UANE, JAMES (born in New York City, February 6, 1733; died in Duanesburg, New York, February 1, 1797), was the son of a citizen of New York, who, after a period of service in the British navy, resigned and engaged in mercantile pursuits. On the side of his mother, Altea Ketaltas, he was con-

nected with some of the old and prominent families of New York of Dutch origin. He became related to the powerful Livingston family by his marriage with Mary, daughter of Colonel Robert Livingston, the proprietor of the manor. James Duane was educated for the legal profession, studying in the office of the distinguished James Alexander. He rose to very great eminence in his profession and was in the enjoyment of a highly profitable practice. Among his clients was the Trinity church corporation in the Anneke Jans suits. He had very large

## James Duane, Esquire,

CITY of  
New-YORK, } *li.*

M A Y O R,

And the A L D E R M E N of the City of N E W - Y O R K.

*To all to whom these Presents shall come, send GREETING :*

**K** N O W Y E, That *Leonard Goetz - Als nommt*  
is admitted, received and allowed a F R E E M A N and C I T I Z E N of the said City ;  
to Have, Hold, Use and Enjoy all the Benefits, Privileges, Franchises and Immunities whatsoever,  
granted or belonging to the said City. I N T E S T I M O N Y whereof, the said Mayor and Aldermen  
have caused the Seal of the said City to be hereunto affixed. W I T N E S S J A M E S D U A N E,  
Esquire, Mayor, the *twenty fifth* Day of *May* — in the Year of our Lord  
*1784* and of the Sovereignty and Independence of the State the *eighth* —

*By order of the }  
Mayor & Aldermen }  
Robt Benson Clk*

*James Duane*

FREEMAN'S CERTIFICATE ISSUED BY MAYOR DUANE.

landed interests in the state. By purchase and inheritance he became the owner of the township of Duaneburg, Schenectady county. About 64,000 acres bought by him in that part of the province which subsequently became Vermont were lost to him by reason of subsequent territorial complications and disputes as to possession. He took a leading part in urging the title of New York to the New Hampshire grants, being the author of the memorial to the assembly in 1773 in support of that claim; and he was instrumental in causing the New York legislature to declare Ethan Allen and his Vermont associates traitors and outlaws.

In 1774 he was chosen a delegate from New York to the first continental congress. In that body he took a quite conservative position, opposing the resolution to give support to Massachusetts in her resistance to the acts of parliament, and siding with Jay in sympathy for the English style of government and the English church as against republican principles. With Jay, indeed, he was at the head of the "party of conciliation" in New York. He was a member of all the subsequent continental congresses. In 1776, before the adoption of the declaration of independence, he was prominent in advocating measures of negotiation with Great Britain. He was a member of the New

*Ja Duane*



ANNEKE JANS' FARM.

York provincial congress in 1776-77, which formulated and adopted the first constitution of the state. During the war he adhered heartily to the patriotic party, but was not connected with the military service. After the departure of the British from New York City in 1783, he returned there and was chosen the first mayor of the city under the state charter. He occupied the office from 1784 to 1789, when he resigned to accept the position of district judge for New York, to which he had been appointed by President Washington. Meantime he was a member of the state senate (1782-85 and 1789-90), of the state council, and of the national constitutional convention. He retired from the bench of the District Court in 1794, owing to failing health.



**DUDLEY, JOSEPH,**<sup>1</sup> the first chief-justice of the Colony of New York (born in Roxbury, Massachusetts, September 23, 1647; died there, April 2, 1720), was the son of Governor Thomas Dudley, of Massachusetts. He was graduated from Harvard in 1665, and, having been designed by his parents for the ministry, studied divinity, but the limited sphere and unostentatious life of a New England clergyman presented no attraction to a man of his worldly ambitions. He accordingly gave up divinity, entered into political life, and shortly afterward was elected a delegate from Roxbury to the general court, and also a magistrate. He was one of the commissioners for the united colonies of New England from 1677 to 1681, and was a commissioner to negotiate a treaty with the Narragansett Indians. In 1682 he was the agent of the Colony of Massachusetts in England, and upon the union of Massachusetts and New Hampshire, in 1685, returned to Boston and was made, under Andros, president of the governor's council, at which period he was enumerated by

*J Dudley*

<sup>1</sup> This biography is taken largely from Honorable Charles P. Daly's "Historical Sketch of the Judicial Tribunals of New York, from 1623 to 1846" (New York, 1855).



Dongan as among a very few who might be relied on as loyal and well affected to the king. In 1687 he was made chief-justice of a superior court at Boston. Throughout the administration of Andros he supported all the measures of that unpopular governor, and as he presided as judge upon political trials, he was especially serviceable in enforcing the despotic colonial policy of James. When the people of Boston rose against the government of Andros, upon receiving intelligence of the revolution in England (1688), Dudley, with other obnoxious persons, was thrown into prison, and later he was sent to England with Andros to answer to the new king. There he succeeded in ingratiating himself with the

*John Dongan*

ministry, by which he was first offered the post of governor of Maryland and Virginia and then that of member of the council of New York, with the promise of a judicial station when the government of Slaughter should be fully established.

Upon his arrival in New York at the close of 1690 he at once joined the anti-Leislerian party, and when Governor Slaughter assumed charge of affairs in 1691 he appointed him at the head of the special commission of oyer and terminer for the trial of Leisler, as chief or principal judge.<sup>1</sup> He pronounced the death sentence upon the accused, who had refused to plead, and one month later (April 15, 1691) was elevated to the office of chief-justice of the Supreme Court of the province. But the Leisler party having obtained the mastery in 1692, he left the province and shortly afterward was removed by Governor Fletcher from the chief-justiceship, Chief-Justice Smith being appointed in his place.

This second reverse of fortune, however, was of but temporary duration. He again went to England, in 1693, and in a very short time became a member of parliament for Newtown, Southampton county, where, some years afterward, he made strenuous but unsuccessful opposition to the reversal of Leisler's attainder. He sat in parliament for eight years, during which time he was appointed lieutenant-governor of the Isle of Wight.

He had now reached a position that might have satisfied a man of ordinary ambition; but, to quote the language of a New England writer, he preferred to be the first man in New England to any subordinate position in the mother country; and accordingly, in 1702, he received a commission from Queen Anne appointing him governor of



LEISLER'S TOMBSTONE

<sup>1</sup> See pp. 81-82 of this volume.

Massachusetts. He was governor of that colony for thirteen years until his death.

Joseph Dudley was a man of great intellectual accomplishments. He had the advantage of an excellent education at the outset of life, had studied divinity and law, and in an age distinguished for metaphysical inquiries, was attracted to and devoted much of his time to the cultivation of philosophy. His love of study, however, and the extensive knowledge he had acquired, had little effect on his character, for he was essentially a worldly-minded man, with whom the possession of power and of exalted station was the chief end and object of life. Struggling throughout the principal part of his career for power and place, he was not over-scrupulous as to the means he employed. The thirteen years that he was governor of Massachusetts was the most useful and blameless period of his life, but his antecedents had been such that his government was bitterly assailed by his enemies; unfounded charges of corruption were made against him and he was frequently referred to as mainly responsible for the guilt of Leisler's blood and held up to public execration as a common murderer. As a public man he was exacting and ceremonious, diligent in the discharge of the duties of his station, and disposed to administer public affairs uprightly where it did not conflict too much with his own interests. In all that belongs to the domestic duties and in the more private relations of life his conduct would seem to have been unexceptionable, and his character is very well summed up by the remark of Hutchinson, that he had as many private virtues as was consistent with a man of worldly aims and aspiring ambition.



**D**UER, JOHN (born in Albany, New York, October 7, 1782; died on Staten Island, August 8, 1858), was a son of William Duer of the Revolution.<sup>1</sup> At the age of sixteen he joined the United States army, from which he retired in two years, entering the law office of Alexander Hamilton. Although his early education was defective, he supplemented it by thorough study, especially in the classics and modern languages. He began legal practice in Orange county, and soon became firmly established in a leading position at the bar. He came prominently into public life in 1821 as a delegate to the constitutional convention, in which he distinguished himself by ability and eloquence. In 1825 he was appointed by Governor Yates to fill the vacancy in the commission to revise the statutes of the state made vacant by the resignation of Chancellor Kent. His

<sup>1</sup> William Duer (born in Devonshire, England, March 18, 1747; died in New York City, May 7, 1799), was educated at Eton and accompanied Lord Clive to India, as aide-de-camp, in 1768. Inheriting his father's estates in Antigua, he came to New York in 1768 to arrange for lumber supplies. Here he made land and other investments, and took up his residence. He was prominent in public life, was a colonel of militia, a

county judge, a member of the New York provincial congress, a member of the committee of safety, a member of the state constitutional convention of 1776-77, a delegate to the continental congress in 1777-78, secretary of the treasury board in 1789 and assistant-secretary of the treasury under Hamilton. He failed in 1792 for \$3,000,000, which resulted in the first financial panic caused by speculation.

original associates in this work were Benjamin F. Butler and Henry Wheaton; but Mr. Wheaton presently resigned, and his place was filled by the appointment of John C. Spencer. Mr. Duer contributed valuably to the labors of the revisers, notwithstanding the pressure of his professional duties. Meantime, in 1827, he had been appointed United States district-attorney at New York City, and in 1828 he resigned from the commission. At the close of the Adams administration he resumed his private practice in New York. He devoted himself especially to commercial law. In 1845 and 1846 he published the first two volumes of an exhaustive work, "A Treatise on the Law and Practice of Marine Insurance." The plan of this work contemplated three volumes, but it was never completed. In 1849, at the election for judges of the Superior Court of the City of New York, he was chosen to that bench, and in May, 1857, he became its chief-justice, as successor to Thomas J. Oakley. He filled that office until his death. In his latter years he edited and published five volumes, and part of a sixth, of reports of the Superior Court.

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DUER, WILLIAM (born in New York City, May 25, 1805; died there, August 25, 1879), was a son of William Alexander Duer (q. v.). He was graduated from Columbia College in 1824, was admitted to the bar and began the practice of law in Oswego. From there he removed to New York City in 1832. The next year he went to New Orleans, and returning in 1835 he again settled in Oswego, where he served as county district-attorney (1845-47) and was twice elected to congress (1847 and 1849). Later he was minister to Chili until 1854 and practiced law in San Francisco. He returned to New York in 1858 and lived in retirement until his death.

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DUER, WILLIAM ALEXANDER (born in Rhinebeck, New York, September 8, 1780; died in New York City, May 30, 1858), was a son of William Duer and a brother of John Duer, the reviser. He began the study of the law in Philadelphia and continued it under Nathaniel Pendleton in New York, being admitted to the bar in 1802. He formed an association with Edward Livingston and afterward with his brother-in-law, Beverley Robinson. Deciding to unite his fortunes to those of Edward Livingston at New Orleans, he removed to that city, where he made a study of Spanish civil law and practiced successfully. His health, however, was impaired by the climate, and having married a daughter of William Denning of New York, he returned to that city. In 1814 he removed his law practice to Rhinebeck, New York. While residing there he was elected to the assembly, and in that body he was the author of a law which became the basis of the present statute on the

common school income, and also was a promoter of canal legislation and of the act vesting in Livingston and Fulton the right of navigation. He became a judge of the Supreme Court in 1822, serving until 1829. He was president of Columbia College from 1829 until his resignation in 1842. He was from his earliest years a contributor to current literature, wrote various pamphlets of historical interest and delivered a number of able lectures and addresses. Notable among his writings is his life of his grandfather, William Alexander, Earl of Stirling (New York, 1847).



DUNNING, BENJAMIN F. (born in Orange county, New York, April 15, 1819; died in New York City, October 17, 1895), was graduated at Union College and began law practice in Goshen, New York. In 1853 he became an assistant of Charles O'Connor in the office of United States district-attorney for southern New York, and at the expiration of his term he entered the law firm of O'Connor, Fullerton & Dunning, which, upon Judge Fullerton's withdrawal, became O'Connor & Dunning, retaining that name until Mr. O'Connor retired from active practice. Mr. Dunning then succeeded to the important business which the great reputation of the firm had attracted. In 1872 he was nominated for judge of the Court of Common Pleas of the City of New York, but declined.



FRIGHT, FRANCIS (born in Springfield, Massachusetts, March 14, 1808; died in Albany, New York, December 15, 1845), was graduated in 1827 from the collegiate department of Harvard, and in 1830 from the law school, being admitted to the bar in 1834 after completing a European tour. He practiced law until 1838 in Massachusetts, Michigan, and New York, when he discontinued his active connection with the profession. He took a strong interest in public school matters, and left his impress on state legislation by originating and bringing to adoption the New York state code of public instruction. From 1840 until his death he published the *District School Journal*, under the auspices of the state government.



DWIGHT, THEODORE WILLIAM (born in Catskill, New York, July 18, 1822; died in Clinton, New York, June 30, 1892), was a son of Doctor Benjamin Woolsey Dwight.<sup>1</sup> He was graduated from Hamilton College in 1840, and after completing a course at the Yale Law School returned to Hamilton as

<sup>1</sup> Benjamin Woolsey Dwight studied medicine in Philadelphia under Benjamin Rush, but abandoned its practice on account of ill-health and engaged in mercantile pursuits. He wrote a notable pamphlet on "Chronic Debility of the Stomach." His father was the illustrious Timothy Dwight, president of Yale College from 1795 to 1817. Theodore William Dwight was a cousin of President Theodore Woolsey, of Yale, and of Timothy

Dwight, who in 1886 succeeded Noah Porter in the Yale presidency.

The American ancestor of the Dwight family was John Dwight, who came to this country in 1634 and became one of the original settlers of Dedham, Massachusetts. One of his descendants was Major Timothy Dwight, of Northampton, who married a daughter of Jonathan Edwards.



a tutor. There he was made professor in 1846. He was the founder of Hamilton Law School, and presided over it until 1858, when, being elected professor of municipal law in Columbia College, he came to New York. He organized the Columbia Law School and was its sole instructor until 1873, when the faculty was enlarged. In 1891 he retired from the institution and was made professor emeritus. During the thirty-three years that he was at its head over ten thousand students were under his instruction and many of the distinguished leaders of the bar in New York and throughout the country were his pupils.

Professor Dwight's fame as a legal instructor is universal and enduring. Professor James Bryce, the eminent author of "The American Commonwealth," in an article on "The Legal Profession in America," written after a visit to this country, said of him :'

Columbia College in New York is fortunate in possessing a professor of great legal abilities, and an extraordinary gift of exposition, whose class-rooms, like those at Harvard, are crowded by large and highly intelligent audiences. Better law teaching than Mr. Dwight's it would be hardly possible to imagine. It would be worth an English student's while to cross the Atlantic to attend his course.

Theodore W. Dwight will be remembered as one of the most important New Yorkers of his generation. His activities were wide and varied in other departments than that of legal education. He was vice-president of the state board of charities, president for many years of the New York prison association for helping discharged convicts, a member of the constitutional convention of 1867 (serving on its judiciary committee), a member of the commission of appeals (1874-75), a member of the committee of seventy, and for a time chairman of its committee on legislation. He was a master of languages, president of the Dante Club, counsel and referee in many important cases, and an excellent contributor to legal literature, being the author of several works in constant use, especially in suits involving charitable uses and trusts. He collected a valuable law library.



MONDS, JOHN WORTH (born in Hudson, New York, March 13, 1799; died in New York City, April 5, 1874), was a grandson of Thomas Worth, one of the first settlers of Hudson. He was graduated in 1816 from Union College and studied law at Cooperstown in the office of George Monell, afterward chief-justice of Michigan. In 1819 he entered the office of Martin Van Buren at Albany, and in 1820 he began the practice of the profession at Hudson. Whilst residing there he held various offices, was prominent in the legislature, and was sent on a government mission to the Indians. In 1843 he removed to New York City, where he soon en-

joyed a high reputation. He was appointed state prison inspector in 1843, and he founded the prison association for the amelioration of the condition of convicted criminals, and also for enabling discharged convicts to earn an honest livelihood. From 1845 to 1853 he was successively circuit judge, judge of the Supreme Court, and judge of the Court of Appeals. He was distinguished on the bench for the qualities of sound judgment, thorough knowledge of the law, industry, and energy.

In 1853 he resumed his private practice in New York. He published in 1864 five volumes of "New York Statutes at Large," containing the revised statutes and the general statutes to 1863. Describing the labors that he performed in connection with this publication, he said that they involved "the perusal of some 45,000 pages of statute law, about one-half of which I have gone over eight or ten times, and the examination of some 25,000 reported cases, half of which I have had to examine twice over." This work was promptly accepted by the bar as a standard authority. He afterward added two supplemental volumes and an index. In 1868 he published a volume of cases decided by himself, mostly at *nisi prius*. He was a staunch believer in spiritualism.



DWARDS, CHARLES (born in Norwich, England, March 17, 1797; died in New York City, May 30, 1868), was an extensive writer on law and other subjects. Among his legal works are "The Juryman's Guide" (1831), "Parties to Bills and Other Pleadings" (1832), "Receivers in Chancery" (1839-46), "Reports of Chancery Cases, 1st New York Circuit—1831-45" (4 vols.), "Receivers in Equity" (1857), and "Referees" (1860). He was graduated at Cambridge, England, and emigrated to New York, where he practiced law. He was counsel to the British consulate-general for a quarter of a century.



DWARDS, HENRY PIERREPONT (born in 1809; died in New York City, February 24, 1855), was a lineal descendant of Reverend Jonathan Edwards and son of Henry Waggaman Edwards, governor of Connecticut and United States senator from that state. He served for seven years as judge of the Supreme Court of New York, ranking high for legal and judicial ability.



DWARDS, OGDEN (born in Connecticut in 1781; died on Staten Island, April 1, 1862), was an uncle of the preceding. Early in the century he became a prominent member of the New York bar. He was surrogate for a long term of years, a member of the legislature, a delegate to the state constitutional con-

vention of 1821, and afterward circuit judge of the Supreme Court until 1841, when he retired, having reached the age limit. He was a whig, and ran for governor unsuccessfully on the ticket of his party.



ELY, ALFRED (born in Lyme, New London county, Connecticut, February 18, 1815 ; died May 18, 1892), was admitted to the bar at Rochester in 1841, and began practice there. He was for years a well-known lawyer of that city. He served in congress as a republican from 1859 to 1863. Early in the war, having been sent to the battlefield of Bull Run as a civilian inspector, he was taken prisoner and confined in Libby prison, where he remained for six months. He afterward published his diary, entitled "Journal of Alfred Ely, a Prisoner of War in Richmond."



EMMET, ROBERT (born in Ireland about 1792 ; died in New Rochelle, New York, September 15, 1873), a son of Thomas Addis Emmet (q.v.), was brought to this country in his boyhood by his father. He adopted the legal profession, was held in high regard by the members of the bar, and became a justice of the Superior Court.

He was more especially distinguished for his active efforts in behalf of his native land, and was conspicuously trusted and esteemed by the representative men of the Irish race resident in New York City. In 1848, when an insurrection was contemplated in Ireland, he cordially co-operated with his countrymen in New York in demonstrations of sympathy, and was one of the directory formed for the purpose of sending material aid to the Irish patriots. He was an impassioned speaker. At the great meeting held at the Tabernacle, June 6, 1848, he delivered an address in which he said : "If Ireland cannot achieve her independence without bloodshed, let it be with blood. I know something of the horrors of civil war in Ireland, but if it must come, I am not now too old, and I shall be found in the ranks of the people of my native island."



EMMET, THOMAS ADDIS (born in Cork, Ireland, April 24, 1764 ; died in New York City, November 14, 1827), was a son of an eminent physician in Dublin and brother of Robert Emmet, the famous Irish patriot, who was executed in Dublin in 1803. He was educated for the medical profession and passed through Trinity College, Dublin, and also Edinburgh University, and obtained his degree. He abandoned medicine to take up law, and entered as a student at the Temple, London, and in 1791 was admitted

to the Irish bar. After his admission he assisted his brother Robert in writing articles on Irish government, and they both went to the continent of Europe to enlist help for Ireland's freedom. Thomas remained at Brussels while Robert crossed to Ireland and engaged in the undertaking which brought him to the gallows. Thomas followed his brother to Ireland and was arrested, charged with being the head of the "United Irishmen," which was alleged to be a treasonable organization. He was confined in jail in Ireland and afterward in Scotland. Being liberated, he went first to Paris and in 1804 came to America and settled in New York, in which city he practiced law the rest of his life. In 1812 he was appointed attorney-general of the state. He was retained in many of the important cases tried in New York City, and also often appeared before the Supreme Court of the United States. He was one of the counsel opposed to Webster in the great case of *Gibbons vs. Ogden*, 9 Wheaton, 1. His argument in this case attracted wide attention and won encomiums from Webster himself. He once sued Chancellor Livingston in behalf of a client who, he claimed, had been unlawfully imprisoned by the chancellor's order, but in that suit he was defeated, the Court for the Correction of Errors deciding that a judge is not liable for a mistake in judgment.

The early New York reports show him to have been engaged in a very extensive law practice, involving all manner of questions, from those of constitutional and international law to those of libel. He was the counsel of Governor Lewis in his libel case against the editor of the *American Citizen*. Emmet was noted for his courtesy while at the bar, never indulging in any vituperative epithets or abusing his opponent, but his gentlemanly instincts did not prevent him from using to the utmost all his ingenuity and shrewdness on behalf of his client. Many interesting anecdotes are told illustrative of his natural and legal cleverness. He died from apoplexy, the stroke of which came on him in the court-room in New York City while engaged in the trial of a case. Although not buried there, he has a commemorative shaft in Saint Paul's churchyard on lower Broadway, New York City. Before his death he published "Pieces of Irish History." Judge Story thus wrote of him :

His mind was quick, vigorous, searching, and buoyant. He kindled as he spoke. His rhetoric was never florid and his diction, though select and pure, seemed the common dress of his thoughts as they arose, rather than any studied effort at adornment.



EMMET, THOMAS ADDIS (born in Ireland in 1798; died in Astoria, Long Island, August 12, 1863), was a son of the preceding. Though not as distinguished as his father and brother Robert, he was a good lawyer, and as master of chancery for a long period made a creditable record.





MOTT, JAMES (born in Poughkeepsie, New York, March 14, 1771; died there April 7, 1850), known as Judge James Emott "the elder," was self-educated, and, after studying law and being admitted to the bar, opened a law office at Ballston Centre, New York, removing from there to Albany about 1800. He was soon regarded as the peer of the great lawyers of that brilliant era of the New York state bar. He held important public offices. In 1797 he was appointed a commissioner to settle the disputes to lands in the military tract of Onondaga county; he was a member of the New York assembly for a number of years, being its speaker in 1814, and a representative in congress from 1809 to 1813, being prominent among the federalist members of that body. His judicial career extended, with a brief intermission, from 1817 to 1831. Upon the organization of the Dutchess county Court of Common Pleas in 1817 he was selected its first judge. In 1827 he became judge of the 2d judicial circuit. He resigned the office in 1831.



MOTT, JAMES (born in Poughkeepsie, New York, April 23, 1823; died there, September 11, 1884), a son of the preceding, was graduated with the first honors from Columbia College in 1838. Admitted to the bar of the Supreme Court at Poughkeepsie in 1844, he entered upon the practice of the law there, with successful results from the start. In 1849 he was appointed district-attorney of Dutchess county, and he became the first mayor of Poughkeepsie upon the granting of its charter in 1854. This office he resigned to become a justice of the Supreme Court for the 2d judicial district in November, 1855. He sat on that bench from January 1, 1856, to January 1, 1864, being appointed presiding judge of the district in 1863 and serving *ex-officio* as judge of the Court of Appeals during the last year of his term. After his retirement from the bench he came to New York City to practice law, and was retained in very many important litigations. Hardly any case of note involving questions of law applicable to corporations arose in the City of New York during the last ten years of his practice in which he was not employed. In the last two years of his life he was prevented by infirmity from conducting cases in court, but his advice as chamber counsel was largely sought for, and many admirable briefs proceeded from his pen after he was unable to stand and address the bench.

The opinions delivered by Judge Emott from the bench were marked by great research, logical reasoning, clear statement of legal principles, and careful examination of the facts of each case. As representative specimens, his opinions in the matter of the Chenango Bridge (27 N. Y. R., 105), in the *People vs. Kerr* (27 N. Y. R., 188), and in the *Metropolitan Bank vs. Van Dyke* (27 N. Y. R., 486) may be mentioned.

He was one of the organizers of the Association of the Bar of the

City of New York, a member of the Union League club, and a prominent member of the celebrated committee of seventy. He took an especial interest in the concerns of the Association of the Bar, and was chairman of its library committee from the beginning. Upon his retirement from that position in 1883, the executive committee testified its strong appreciation of his services by a resolution reciting that the library owed "its existence as well as its present efficiency largely to his comprehensive knowledge of legal literature and his sound and discriminating judgment in the organization and development of the various classes of which so great a library is necessarily composed." "The very inception of the library," the committee added, "is due to his energy in the organization of the 'century fund,' made up of the subscriptions of a hundred members of the association at the time of its organization."

Although the last twenty years of his professional life were passed in New York, he retained his residence in Poughkeepsie. For thirty-two years he was president of the Merchants' Bank of that city.



EWING, THOMAS (born in Lancaster, Ohio, August 7, 1829; died in New York City, January 21, 1896), was the third son of that eminent lawyer and statesman, Thomas Ewing, senator from Ohio, secretary of the treasury, and first secretary of the interior. He was of Scotch-Irish descent and traced his lineage from Findley Ewing, of Londonderry, Ireland, a native of Lower Loch Lomond in Scotland, who distinguished himself in the war of 1688 under William of Orange. His paternal grandfather, George Ewing, was a lieutenant in the war of the Revolution. At nineteen Thomas Ewing was secretary of the commission to settle the question of the boundary between Virginia and Ohio, and a year later he became one of the secretaries of President Taylor. He later entered Brown University, and graduated from that institution in 1854. The following year he completed his law studies at the Cincinnati Law School, and in 1856 began practice at Leavenworth, Kansas, in the firm of Sherman, Ewing & McCook, including General Dan McCook and General William T. Sherman. General Ewing soon placed himself at the head of his profession in Kansas, and took a conspicuous part in the struggle which made it a free state. He represented Kansas in the peace conference assembled in Washington in 1860, and at the age of twenty-nine was elected first chief-justice of the Supreme Court of that state. He took an active part in the struggle to make Kansas a free state, and was a member of the free state convention, though he bolted the convention on the discovery of the frauds perpetrated by the enemies of the free state constitution.

He first appears in the civil war as colonel of the 11th regiment of Kansas volunteer infantry, recruited and organized by him in 1862. He led his command in several severe engagements in Arkansas—at Cane

Hill, Van Buren, and Prairie Grove,—and for gallant conduct was promoted to be brigadier-general on the 11th of March, 1863. Soon after he was assigned to the important command of the "district of the border," comprising the State of Kansas and the western portion of Missouri, which he held from June, 1863, to February, 1864, and in which he won the emphatic approval of President Lincoln and General Schofield. His "Order No. 11," issued while he held this command, directing the inhabitants of large portions of three border counties of southern Missouri to remove to the military posts or out of the border, was and is still severely criticised. It was the result of a peculiarly difficult situation, solvable in no other way, and it is enough to say that in a published letter General Schofield said: "The responsibility for that order rests with President Lincoln and myself in the proportion of our respective rank and authority." General Ewing's most distinguished service during the war was in fighting the battle of Pilot Knob on the 27th and 28th of September, 1864. General Rosecrans in a special order says of this brilliant episode:

With pride and pleasure the commanding general notices the gallant conduct of Brigadier-General Thomas Ewing, Junior, and his command, in the defence of Pilot Knob, and in the subsequent retreat to Rolla. With scarcely one thousand effective men they repulsed the attack of Price's invading army, and successfully retreated with their battery a distance of one hundred miles in the face of a pursuing and assailing cavalry force of five times their number. General Ewing and his subordinates have deserved well of their country. Under such commanders, federal commanders should always march to victory.

After the war until 1880 General Ewing was conspicuous in Ohio and national politics. He was a member of the Ohio constitutional convention of 1873-74, where his legal attainments and admirable powers of debate gave him a foremost place. He was a member of the 45th and 46th congresses, and took an active part in their proceedings. In 1879 he was the democratic candidate for governor of Ohio, but was defeated. A ripe scholar, a strong, ready and graceful speaker, an expert parliamentarian, and possessing a personal magnetism which irresistibly attracted and firmly held the attention of the masses, he was admirably equipped as a popular leader.

Since 1882 he held aloof from active participation in politics and engaged with great success in the practice of the law in New York City. He was one of the founders of the Ohio society of New York, and for three years its president.



ARWELL (or FARRAWELL), GEORGE, was appointed in 1691, with William Nicoll and Emott, to prosecute Leisler. It is supposed that he was "West's creature," mentioned in a letter written by Randolph, of Massachusetts, from Boston, January, 1688, to Mr. Povey. "I have wrote you," said Randolph, "of the want we have of two or three honest attorneys (if any such

thing be in nature). We have but two ; one is West's creature ; came with him from New York, and drives all before him. He also takes extravagant fees, and for want of more, the country cannot avoid coming to him, so that we had better be quite without them than not to have more."<sup>1</sup>



**FELLOWS, JOHN RANDOLPH** (born in Troy, New York, in 1831 ; died in New York City, December 7, 1896), emigrated to Arkansas as a young man, studied law, and was admitted to the bar. When the war broke out, although a northerner by birth, his sympathies were strongly with the confederacy, and he enlisted as a private in the confederate army. He soon rose to the rank of colonel and served until the capture of Fort Fisher, when he was taken prisoner and was put under parole until the close of the war. Then he resumed his practice in Little Rock, Arkansas, where he married. He came to New York during the Grant-Seymour campaign, and one of his speeches in support of the democratic candidate attracted wide attention for its oratorical brilliancy. Shortly after he was appointed assistant-district-attorney of New York City under S. B. Garvin. He served in this capacity until 1887, when he was elected district-attorney. In 1890 and 1892 he was elected to congress, but he resigned his seat in 1893 to again become district-attorney, continuing in that office until his death.

During his official career he conducted a large number of important cases. He prosecuted most of the boodle aldermen and secured the convictions of several. When E. S. Stokes, of the Hoffman House, was tried for the murder of James Fisk, Colonel Fellows found himself in a most peculiar position. He was Stokes' friend and legal adviser, and yet, as assistant-district-attorney, he was assigned to conduct the case against him. He did so and secured a verdict of murder in the first degree. When a new trial was granted and he was again assigned to the case, he resigned rather than continue in the matter. His resignation was not accepted and another assistant was assigned on the case.



**FIELD, DAVID DUDLEY** (born in Haddam, Connecticut, February 13, 1805 ; died in New York City, April 13, 1894), was the eldest child of the Reverend David Dudley Field and Submit Dickinson, his wife.<sup>2</sup> When a boy less than ten years old he had already, under his father's tutelage, mastered the rudiments

<sup>1</sup> Quoted by Washburn, "Judicial History of Massachusetts," p. 104.

<sup>2</sup> The Field family is a notable one in the annals of America. The father, Reverend David Dudley Field, was a clergyman of great learning and intellectual force. He preached at Haddam, Connecticut, and Stockbridge, Massachusetts. He had a numerous family, all of whom attained more or less distinction. Cyrus W. Field, one

of the sons, was the projector of the Atlantic cable ; Stephen J. Field, another son, is now (1897) one of the justices of the Supreme Court of the United States ; Henry M. Field, a third son, was an eminent clergyman and editor ; a daughter, Emilia Ann, married the Reverend Josiah Brewer, and their son, David J. Brewer, is one of the justices of the Supreme Court of the United States.



of Latin and Greek. He took the four years' course at Williams College and graduated therefrom in 1825. He then went to Albany, New York, and read law with Harmanus Bleecker, but soon thereafter went to New York City, where in 1828 he was licensed as an attorney, and in 1830 was admitted as counsellor. From the time of his admission to the bar up to within a few years of his death he was engaged in the active practice of the law in New York City, becoming one of the foremost lawyers of America. He was on one side or the other in nearly all the celebrated cases tried in the metropolis. He took part in the "Erie litigation" as counsel for James Fisk; he was leading counsel for William M. Tweed, in which case he succeeded in convincing the Court of Appeals that "cumulative sentences" for misdemeanors were not warranted by law; he was leading counsel for Samuel J. Tilden before the electoral commission and argued the validity of the electoral returns from Florida. He was one of the counsel for Milligan, the Indiana copperhead, who was sentenced by a court-martial to be hanged for treason. Mr. Field induced the Supreme Court of the United States to decide in this case that where the judges of the federal Circuit Court are divided in opinion on the merits of a *habeas corpus* the question could be certified to the United States Supreme Court; but the real triumph consisted in the ruling (sustaining Mr. Field's contention) that a civilian not in the military service or in an insurrectionary state could not be tried by court-martial, but must be tried by the civil tribunals. He took a conspicuous part in other important cases before the United States Supreme Court.

But it is upon his achievements as a codifier rather than as a practicing lawyer that Mr. Field's reputation and celebrity rest. In 1839 he addressed a letter on the subject of the necessity of codification to Gulian C. Verplanck. In 1841 he submitted to the legislature several bills codifying certain portions of the law, but they failed of passage. When the state constitutional convention met in 1846 to amend the constitution, Mr. Field, though not a member, brought influence to bear to have the convention declare for codification as a proper means to rid the law of its traditional terrors. The convention recommended that the distinction between law and equity should be abolished and that commissioners should be appointed to prepare codes. In 1847 Mr. Field was appointed one of the commissioners to draft appropriate codes, and in such capacity he prepared the celebrated New York code of civil procedure, which was passed by the legislature and went into operation in 1848. He drafted and submitted to the legislature at various times three other codes, one called the penal code, stating the substantive criminal law, which was adopted by the legislature in 1882; another, the code of criminal procedure, dealing with the adjective criminal law, adopted in 1881; and the third—his most ambitious undertaking—the so-called civil code, which deals with substantive civil law, but which has failed of passage. His code of civil procedure is the

prototype for the practice codes of twenty-seven other states and three territories, while his civil code has been enacted in the main in California and the two Dakotas. In 1866 he advocated before the English association for the promotion of social science the preparing and adopting of international codes, the distinctive feature of which should be arbitration and the abolition of war. He drafted an international code called "Outlines of an International Code," which has been translated into Chinese, Italian, and French. He was the first president of the "association for the reform and codification of the laws of nations."

Mr. Field never took a very active part in politics, but was a member of congress in 1877, being elected to fill the unexpired term of Smith Ely, who had been elected mayor of New York City. As a member of congress he was regarded as Mr. Tilden's spokesman on the floor, and he took a very active part in the Hayes-Tilden contested election case. His writings and attitudes on the various questions of the day, including his favorite subject of codification, may be found in a collected form in his "Speeches, Arguments, and Miscellaneous Papers," published in 1886.

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FIELD, MAUNSELL BRADHURST (born in New York City, March 26, 1822; died there, January 24, 1875), was graduated from Yale College in 1841 and was admitted to the bar in 1847. He began the practice of the law in New York with John Jay. He travelled extensively and filled positions in the diplomatic service of the United States, being secretary of legation at Paris under John Y. Mason and attached to the legation at the Spanish capital under Pierre Soulé. He was one of the American commissioners to the Paris exposition in 1855. Later he was assistant-secretary of the treasury, resigning in 1865, and collector of internal revenue for the 6th district of New York until 1869. He then returned to his professional practice and became judge of the 2d District Court in New York to fill a vacancy, remaining in that office until 1874. He was an accomplished writer, and published a volume of "Memoirs" which enjoyed popularity.

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FILLMORE, MILLARD, thirteenth president of the United States (born in Locke—now Summerhill—township, Cayuga county, New York, February 7, 1800; died in Buffalo, March 7, 1874), was descended from John Fillmore, a mariner of Ipswich, Massachusetts, who emigrated from England early in the eighteenth century. The grandfather of the future president, Nathaniel Fillmore, fought in the French and Indian war and the Revolution, rising to the rank of lieutenant. His son, also named Nathaniel, married Phebe Millard about the close of the last century, and removed to New York state, building a log cabin in the wilderness. He had

the misfortune to lose his property in consequence of defectiveness in its title. He then took 130 acres in the "military tract" of the same county, very poor and wholly unimproved land.

Millard Fillmore in his early youth worked on his father's farm, attending school in the winter months. At the age of fourteen he was apprenticed to a wool-carder. He worked at that trade until he was nineteen years old. Meantime his attendance at school was discontinued, but he made diligent use of such books as he could obtain. Aspiring to become a lawyer, he entered in 1819 the office of a retired country practitioner, receiving his board in recompense for his services, and teaching school for a part of the time. After four years of study, although he had not finished the requisite course, he was admitted to the bar of the Erie county Court of Common Pleas through the influence of friends in Buffalo. Engaging in practice at Aurora, he won his first case, receiving a fee of \$4, and in 1827 and 1829, respectively, was admitted an attorney and a counsellor of the Superior Court. Removing to Buffalo in 1830, he soon after established a copartnership with Nathan K. Hall, in which Solomon G. Haven subsequently joined. From that time until 1847 Mr. Fillmore's firm (Fillmore, Hall & Haven) was one of the most prominent law firms in western New York, being retained in practically every important case arising there. He was rated as a lawyer of thorough learning and sound qualities, and his legal career and reputation formed the basis for all the political distinction that he attained.

His active professional practice was soon interrupted by his duties in various public offices. He represented Erie county, as a whig member, in the legislature from 1828 to 1831. During his service in that body he was the author, jointly with John C. Spencer, of the act abolishing imprisonment for debt (passed in 1831). He was elected to congress in 1832, and re-elected in 1836, 1838 and 1840. He was chairman of the ways and means committee of the house of representatives in the 27th congress, and was the principal framer of the tariff of 1842. As the head of the ways and means committee he procured the passage of a resolution requiring the government departments, in submitting estimates of expenses, to make reference in all cases to the laws authorizing them. Declining a renomination, he retired from congress in 1843, having made a reputation as one of the ablest members of the legislative branch of the government. In 1844 he was a candidate for the whig nomination for vice-president, but was defeated in the convention. In the fall of that year he was nominated unanimously by the whigs for governor of New York. He was beaten at the polls by the democratic candidate, Silas Wright. In 1847 was elected state comptroller, and in 1848 was nominated and elected vice-president of the United States on the ticket with General Taylor. President Taylor died on July 9, 1850, and on the next day Mr. Fillmore qualified as his successor.

The administration of President Fillmore is memorable chiefly for the adoption of the compromise measures, including the fugitive slave law. These measures were not originated by the political party for which the administration stood; for the democrats were in the ascendancy in both houses of congress. But the president, having been assured by the attorney-general that the fugitive slave law was a constitutional act, signed it. In this he had the unanimous approval of his cabinet, of which Daniel Webster was the head. But his course proved very distasteful to the people of the north, so much so that in the whig national convention of 1852 he received only twenty votes from the free states for the presidential nomination. Aside from its policy on the slavery question, the Fillmore administration gave general satisfaction to the country. Some of its leading events were the inauguration of the system of cheap postage, the laying of the cornerstone of the capitol extension, the negotiation of the Perry treaty, by which the Japanese ports were opened to our trade, and a strong reaffirmation of the time-honored doctrine of non-intervention in the concerns of European nations. Mr. Fillmore's public career ended with his retirement from the presidency on March 4, 1852, and although nominated by the "American" party in 1856 as its presidential candidate, he received the electoral vote of only one state (Maryland).

In the closing period of his occupancy of the executive office, Mr. Fillmore contemplated resuming the practice of the law, and, his old Buffalo firm having been dissolved, he arranged to open a law office in New York City in partnership with Judge Henry E. Davies, of the Court of Appeals. But being soon afterward sadly bereaved by the death of his wife, he changed his plans and retired to private life, from which he never afterward emerged.



**FISH, HAMILTON** (born in New York City, August 3, 1808; died in Garrison, New York, September 7, 1893), was a son of Nicholas Fish, an officer of the Revolution and a prominent public man and citizen of New York.<sup>1</sup> He was graduated in 1827 from Columbia College, and in 1830 was admitted to the bar, becoming soon prominent in his profession. He entered actively into politics as a whig, and speedily took a leading place in the party. He was elected to congress in 1842. He was a candidate for lieutenant-governor in 1846, and although defeated was chosen to the office the next year to fill a vacancy. In 1848 he was elected governor over John A. Dix and Reuben H. Walworth, receiving a majority of 30,000. In 1851 he suc-

<sup>1</sup> Nicholas Fish was born in New York City, August 28, 1758, and died there June 20, 1833. He studied law in the office of John Morin Scott. He was in active service throughout the Revolution, and distinguished himself by gallantry and ability. He possessed the confidence of Washington, and was an intimate friend

of Alexander Hamilton, for whom his son was named. He was adjutant-general of the State of New York for many years, an alderman of New York City, and supervisor of revenue under Washington. He served as president of the New York Society of the Cincinnati.



ceeded Daniel S. Dickinson in the United States senate. He affiliated with the republican party from the time of its organization. He was conspicuous during the presidential campaign of 1860 in promoting the election of Mr. Lincoln. In 1862 he was sent, with Bishop Ames, as a commissioner to visit the United States soldiers confined at Richmond and elsewhere, "to relieve their necessities and provide for their comfort," and the result of this mission was an agreement, which lasted throughout the war, for exchanging prisoners. Upon the organization by President Grant of his first cabinet in 1869 Mr. Fish was appointed secretary of state, and he retained that office until the close of General Grant's presidency, a period of eight years.

The career of Hamilton Fish as secretary of state was marked by the determination of a number of very grave international questions. He was one of the commissioners on behalf of the United States in the negotiation of the treaty of Washington of 1871; he settled the old northwestern boundary controversy with Great Britain; he adjusted the critical questions between the United States and Spain growing out of the Cuban insurrection, and it was at his instance that the Geneva tribunal for the settlement of the "Alabama claims" incorporated in its decisions a provision securing this country against claims for indirect damages resulting from Fenian raids or Cuban filibustering expeditions.

Mr. Fish's preference for public life, and the official duties that he was called upon to discharge, removed him from the formal practice of his profession at a comparatively early age. He was at one time in partnership with William Beach Lawrence. As a lawyer he devoted himself exclusively to office practice, acting as counsellor rather than advocate, giving his attention chiefly to real estate, in which he was well versed and of which he was a large holder. For several years he was president of the New York Historical Society.



NICHOLAS FISH



**F**ITHIAN, FREEMAN J. (born in Erie, Pennsylvania, in October, 1822; died in New York City, August 4, 1884), studied law in the office of Judge Gardner at Lockport, New York, and practiced in that place for seven years, when he removed to Buffalo, forming an association with Eli Cook. While residing in Buffalo he served as district-attorney of Erie county. He next came to New York City, where in 1868 he was appointed justice of the Superior Court, a position which he filled until January, 1870. After-

ward resuming the practice of his profession, in partnership with Lemuel B. Clark, he was counsel in many suits involving large amounts of money. He was the attorney for Daniel Drew. One of his celebrated cases was that of the New England Iron Company *against* the Elevated Railroad Company, to recover \$6,000,000 for alleged breach of contract. The trial of this case lasted twenty-one days, resulting in a disagreement.

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ITZHUGH, SAMUEL H. (born at the Hive, Washington county, Maryland, February 22, 1796), was graduated from Jefferson College, Pennsylvania, in June, 1816, and immediately afterward entered the law office of Judge Howell, of Canandaigua, New York. He was called to the bar in 1817, removed to Wheeling, Virginia, and engaged there in successful practice, his reputation extending to Pennsylvania. He removed in 1831 to Mount Morris, Livingston county, New York, where for a time he speculated in land. In 1840 he was appointed associate-judge of the Livingston county Common Pleas Court. He served with conspicuous ability on that bench, before which the leading lawyers of western New York constantly appeared. For several years afterward Judge Fitzhugh practiced at the bar, and controlled a large and remunerative business.

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FOLGER, CHARLES JAMES (born in Nantucket, Massachusetts, April 16, 1818; died in Geneva, New York, September 4, 1884), was graduated from Geneva College (now Hobart College) at the age of eighteen. He then went to Canandaigua and engaged in the study of the profession of the law. In 1839 he was admitted to the bar in Albany, after which he practiced for a while in Lyons, New York. In 1840 he removed to Geneva. He was chosen to the Common Pleas bench of Ontario county in 1843, served also as master and examiner in chancery, and was county judge from 1852 to 1856. In 1854 he severed his connection with the democratic party and joined the republican organization. For thirteen years after his retirement as judge of Ontario county he diligently and successfully practiced his profession, making a reputation as one of the best lawyers of the state. He continued, however, to take a decided interest in public affairs, serving as state senator from 1861 to 1869, being chairman of the judiciary committee of the senate throughout that period, and president *pro tempore* for four years. In the constitutional convention of 1867 he was chairman of the judiciary committee. From 1869 to 1870 he was assistant-treasurer of the United States in New York City.

In 1871 Judge Folger was elected a member of the Court of

Appeals. He served as an associate-judge of that court with eminent ability, and was promoted to the place of chief-judge in 1880, to succeed Sanford E. Church. At the fall election of that year he was chosen by the people for a term of fourteen years. But the fascinations of high political office proved irresistible to Judge Folger, and being offered the position of secretary of the treasury by President Arthur in 1881, he resigned his distinguished judicial station to accept it. This proved to be the initial step in a succession of momentous and far-reaching political events. Secretary Folger was nominated in 1882 for governor of New York by the republican party, but it was felt by the public that the methods by which his nomination was brought about constituted an unwarrantable interference by the federal administration in the politics of the state, and his democratic opponent, Grover Cleveland, was elected by the enormous majority of 192,000—a result which paved the way for the national defeat of the republicans in 1884 and for the long public career of Mr. Cleveland.

Judge Folger continued at the head of the treasury department until his death.



FOOT, SAMUEL ALFRED (born in Wethersfield, Connecticut, December 19, 1790 ; died in Geneva, New York, May 11, 1878), was graduated from Union College and studied law in Albany, where his brother, Ebenezer Foot, was an eminent practitioner. He was admitted to the bar in 1813, and speedily made for himself a reputation of much distinction. He became district-attorney of Albany county in 1819. In 1825 he removed to New York and established a copartnership with Judge William Kent. Subsequently he was associated with his nephew, Henry E. Davies, and still later with Honorable William E. Curtis. For nearly twenty years he was a prominent figure in the metropolis, not only at the bar but as a citizen. In 1844 he went to reside at Geneva, New York, and three years later he was appointed a judge of the Court of Appeals, occupying the position until 1852. During the administration of President Tyler he was very prominently mentioned for a place on the bench of the United States Supreme Court, but the president preferred another for that office. From 1855 to 1857 he served in the assembly. He was a delegate to the constitutional convention of 1867. Originally a democrat, he became in later years a whig and then a republican. In 1876 he wrote a reply to Judge Jeremiah S. Black's views on the electoral commission which attracted wide attention. He wrote and published his autobiography, in two volumes (privately printed, 1872).

As a lawyer and jurist Foot always occupied a commanding position. He continued in active practice to the end of his life, and at the time of his death probably was the oldest practicing member of the state bar.



OSTER, HENRY ALLEN (born in Hartford, Connecticut, May 7, 1800 ; died in Rome, New York, May 12, 1889), was educated in the common schools of Cazenovia, New York, studied law in the office of David B. Johnson, and was admitted to the bar in 1822. He took an interest in politics, as a democrat, at an early age, was a member of the state senate from 1831 to 1834 and from 1841 to 1844, served in congress from 1837 to 1839, and was appointed senator of the United States in 1844 as successor to Silas Wright, Junior, continuing in that office until 1847. In 1853 he was appointed by President Pierce United States district-attorney of northern New York, but he declined. He was twice appointed surrogate of Oneida county. He was the last surviving member of the "Albany Regency," the combination of democratic leaders which for so many years controlled the state. In 1863 he was elected justice of the Supreme Court for the 5th judicial district.

Senator Foster was a man of much talent, as a lawyer, a judge and a politician and legislator, but possessed a domineering nature and manifested at times a somewhat violent temper. He continued to practice law until a few years before his death.

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OSTER, JACOB POST GIRAUD (born in New York City, April 8, 1827 ; died there, February 26, 1886), was one of the most prominent practitioners at the metropolitan bar in the special department of insurance law. He was graduated from Columbia College in 1844 with the first honors, went through the Harvard Law School and was admitted to the bar in 1848.

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URMAN, GABRIEL (born in Brooklyn, New York, January 23, 1800 ; died there, November 11, 1854), was a Brooklyn lawyer of great natural ability, whose promising career, however, was marred by the opium habit. He became a justice of the Brooklyn Municipal Court in 1827, serving for three years, and from 1839 to 1842 was a member of the New York state senate. He was an unsuccessful candidate, on the whig ticket, for lieutenant-governor in 1842. In 1824 he published "Notes, Geographical and Historical, Relative to the Town of Brooklyn." He made elaborate and valuable researches concerning the history of Long Island and Brooklyn, and left manuscripts which have proved highly useful to subsequent investigators.

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ARDINER, ADDISON (born in Rindge, New Hampshire, March 19, 1797 ; died in Rochester, New York, June 5, 1883), one of the most distinguished of the lawyers of western New York, was taken by his parents when quite young to Manlius, New York, where his father located. The father became a friend of



Colonel Seymour, the father of Horatio Seymour. Young Gardiner received his early education at the Manlius Academy and afterward entered the senior class of Union College, where he graduated in 1819. After his graduation he returned to Manlius and began the study of law. While a law student he made the acquaintance of Thurlow Weed, who was at that time a young journalist in Manlius. A friendship sprang up between the two young men which lasted all their lives. Mr. Weed in subsequent years often spoke in the highest terms of Mr. Gardiner's abilities. The foundations of his legal learning were laid deep. He read not only Blackstone, but Coke, Bracton, Lyttleton, Fleta, and others of the old sages of the common law. From these sources he learned that "root of the matter" which so distinguished him in after life. He was admitted to the bar in 1822, and at once moved to Rochester, where he was chosen justice of the peace. He early distinguished himself at the bar, trying cases in conjunction with or opposed to the most eminent lawyers of western New York. He was appointed district-attorney for Monroe county in 1825. Soon after he began practice he formed a partnership with Samuel L. Selden, and later Henry R. Selden became a member of the firm. The Selden brothers, then young, became among the most distinguished lawyers of New York, both rising to the bench of the Court of Appeals. The firm rapidly made its way to the front and soon monopolized most of the profitable practice in Rochester.

In 1829 Mr. Gardiner was appointed a circuit judge for what was then known as the 8th circuit, which was composed of most of the western New York counties. He held court in all these counties for nearly nine years, when he resigned his seat on the bench and resumed practice at Rochester. While acting as circuit judge he presided at the trial of the People *vs.* Mather, tried in the Orleans circuit in November, 1829. This was a *cause celebre* in western New York. Mather had been indicted as one of the abductors of William Morgan. The trial occupied ten days and Mather was acquitted. Owing to the popular excitement and hatred against the prisoner the trial of the case was exceedingly difficult, but Judge Gardiner gave a perfectly fair and impartial hearing to both the state and the prisoner. Eminent counsel were engaged on both sides of the case, among them John C. Spencer, special attorney-general for the state. Mr. Spencer was dissatisfied with one of Judge Gardiner's rulings and took the point by appeal to the general term of the Supreme Court, which sustained the ruling. The case on appeal is reported in 4 Wendell, 229, William L. Marcy delivering the opinion.

In 1844 Judge Gardiner was elected lieutenant-governor of the state on the ticket with Silas Wright. In 1847 he was chosen a judge of the Court of Appeals, resigning as lieutenant-governor. He was thus an original member of the newly-born court of final jurisdiction, whose duty it was to decide the questions arising under the new scheme of

judicial arrangement and to apply the provisions of the new code of procedure. He served as a judge of the Court of Appeals until 1855, declining a renomination. His opinions may be found in volumes 1 to 13, inclusive, of the reports of the Court of Appeals.

After he retired from the bench he continued to practice in Rochester until his death. He was regarded as the Nestor of the bar of western New York, and lawyers constantly consulted him when in difficulties about their own cases. He played the *role* of a distinguished barrister in the latter years of his life.

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ARVIN, SAMUEL B. (born in Butternuts, Otsego county, New York, in 1811; died June 28, 1878), studied law and was admitted to the bar in Norwich, New York, and in 1840 removed to Utica. In 1850 he was elected district-attorney of Oneida county, and in 1856 he was appointed by President Pierce United States district-attorney for northern New York. He resigned after two years, and, going to New York City, entered the firm of Schaeffer, Garvin & Dodge. He was elected judge of the Superior Court in 1862, but resigned the position before completing his term. Governor Hoffman appointed him district-attorney of New York City to fill a vacancy, and he was afterward elected to that office for a full term.

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ATES, SETH MERRILL (born in Winfield, Herkimer county, New York, October 16, 1800; died in Warsaw, New York, August 24, 1877), was admitted to the bar in 1827, and for fifteen years practiced in Le Roy, New York, removing from there to Warsaw. He was a member of the legislature in 1832, and of congress from 1839 to 1841. While in the legislature he took a prominent part in the granting of the charter for the first railway in the western part of the state. He was successful in his profession, and was also widely known for his aggressive anti-slavery views. During his service in congress, in 1843, he wrote the protest of the whig members of congress against the annexation of Texas, the authorship of which has by some writers been mistakenly attributed to John Quincy Adams. He was the free-soil candidate for lieutenant-governor in 1848.

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ERARD, JAMES WATSON (born in New York City in 1794; died there, February 7, 1874), was graduated from Columbia College in 1811, and received his preparation for the bar in the law office of George Griffin. He advanced to the foremost rank of the profession, and for years was one of the most prominent men of New York, both as a lawyer and as an active and useful citizen. He continued in the practice of the law until 1869. It

was mainly to his efforts that the adoption of uniforms for the police force was due. He was an earnest and intelligent advocate of measures of practical philanthropy. He originated the system of houses of refuge for juvenile delinquents, and took the leading part in obtaining the incorporation of such an institution in New York in 1824. He manifested a keen interest in public education, and the only offices he could be prevailed upon to accept during his life were those of school trustee and inspector.



**IFFORD, GEORGE** (born in Dutchess county, New York, in 1811; died in Jersey City Heights, July 2, 1883), became at an early age a student of the law at New Paltz, Ulster county. Devoting himself specially to patent law, he built up a reputation as one of the leading patent lawyers of the day, and he was connected with practically all the important litigations on patents relating to the various applications of electricity. As early as 1856 he was the senior counsel of Elias Howe, and as his representative, and subsequently as counsel for the combination composed of the Singer, Wheeler & Wilson and the Grover & Baker sewing-machine companies, he successfully sustained the monopoly until the expiration of the patents. In the meantime he acted both as referee to settle the internal disputes of the companies and as receiver for the collection and distribution of their moneys.



**OULD, WILLIAM** (born in Caldwell, New Jersey, in 1814; died in July, 1886), was a noted law-book publisher of New York City. His ancestry lived for a century in Caldwell, New Jersey. William came to New York City in 1836 and engaged in the law-book publishing business with his uncle, William Gould. Another uncle had begun law-book publishing in New York toward the end of the eighteenth century, his establishment being the second of its kind in the United States. (The first was in Philadelphia.) The firm started by the uncle and nephew in 1836 became William & A. Gould & Co., and then Gould, Banks & Co. Afterward William Gould the younger associated his son with him in the firm of William Gould & Son.



**RAHAM, DAVID** (born in London, England, February 8, 1808; died in Nice, France, May 27, 1852), was a son of David Graham, an early *nisi prius* practitioner of note.<sup>1</sup> He was carefully educated by his father, was admitted to the

<sup>1</sup> David Graham, the elder, was born in the north of Ireland in 1777, and was educated as a presbyterian clergyman. He was fast becoming recognized as a brilliant pulpit orator, when he was obliged to emigrate to America for political reasons. His son was born while he was preparing to leave. In New York he em-

braced the legal profession, and he became very prominent at the metropolitan bar, being especially distinguished as an orator and for the masterly construction of his arguments. He was also an accomplished scholar. He died in New York City in 1839.

bar upon attaining his majority, and soon began to rival his father. At the age of twenty-four he was appointed one of a committee of lawyers to prepare a new city charter that was intended to supersede the old royal instrument and to be submitted to popular vote. At the age of thirty-eight he was selected by legislative act, with Arphaxad Loomis and David Dudley Field, a commissioner to compile a code of criminal procedure—the germ of the code now in statutory use in the state of New York. He also early compiled and published a law book of practice—"Practice of the Supreme Court of the State of New York" (1832),—which for two decades following was a standard authority. Although he was a master of civil procedure, his taste, like that of the elder Graham, inclined to the department of criminal jurisprudence. Both father and son possessed great magnetism of manner, adroitness and other qualities which peculiarly adapted them for criminal practice. Early in his career, by his successful defence of Ezra White in a sensational murder case, he attracted attention. Soon after he defended Polly Bodine, accused of murder, securing at the first trial a disagreement of the jury, at the second, which resulted in conviction, an order for a new trial, and at the third the acquittal of his client. These successes established his reputation, and ever afterward he enjoyed a wide and lucrative practice. His defence of Bishop Onderdonk in his trial before the house of bishops in 1844 was another of his celebrated cases.

To a certain extent he was interested in politics, being chosen alderman and corporation counsel (1842), but he declined all proffered political offices that would have withdrawn him from his profession. He was a whig, devoted to Webster and Clay, and rendered able and effective service in the Harrison and Tyler campaign. He was a figure in the social life of New York, and was a highly pleasing speaker on public and festive occasions.

Early in 1852 failing health compelled him to abandon his profession. He sought restoration in travel, but died in the spring of the same year.

In addition to his important work on practice, he published "New Trials" (1834, subsequently enlarged by his son and Thomas Watterman, and republished in three volumes in 1856), "Courts of Law and Equity in the State of New York" (1839), and an annotated edition of Smith's "Chancery Practice" (1842).



GRAHAM, JAMES, the first recorder of the City of New York, was a native of Scotland. Coming to New York, he became a prominent merchant and citizen. His will is on file in the surrogate's office, dated January 12, 1700-1. He was appointed by Governor Dongan to the office of recorder, serving, with the exception of two years, from January 14, 1683, to October, 1700. He



was also speaker of the assembly for nine years—1691–99. On the day following his appointment as recorder all the new magistrates went in a body to the fort, and, being sworn in before the governor and council, returned and opened court, the recorder “taking his seat on ye right hand of ye mayor.” The recorder held a Recorder’s Court, in which he presided as the chief officer. “As it sat only once in three months, whereas the Mayor’s Court sat every two or three weeks, it was deemed a court of a higher grade, in which, at first, the more important civil actions were brought and the principal criminal offences were tried.”



**GRAHAM, JOHN** (born in New York City, September 14, 1821; died there, April 9, 1894), was the second son of David Graham the elder. He entered Columbia College under a special examination at eleven years of age, and was graduated before he was fifteen as valedictorian of his class. He began the study of law in his father’s office, but the latter dying in 1839 he finished his studies with his brother David, and was admitted to the bar in 1842. One of the earliest cases of note in which John Graham appeared was with his brother in the defence of John S. Austen, a member of the Empire club, for the murder of Shea. He also defended Donaldson. His first great case, which attracted the attention of the entire country, was the defence of Daniel E. Sickles for the killing of Francis Barton Key in Washington on February 27, 1859. James T. Brady, Stanton Bradley, and Peter Caggar were the other lawyers for Sickles. Another case of wide interest eleven years later was the defence of Daniel McFarland for killing A. D. Richardson in the *Tribune* office, November 25, 1869. During this trial he said: “This is the third occasion within twelve years on which, although a single man myself, I have had the distinguished honor conferred upon me of upholding and defending the marriage relation. Within that period the three most exciting trials have occurred in this country which have ever occurred, and it has been my privilege to appear in every one of them.” The intervening suit was the Strong divorce case, in which Mr. Graham defended Mrs. Strong and established her innocence. Among other famous suits were the Arnold divorce case, the celebrated Hunt divorce case, the first trial of Tweed, the defence of General Alexander Shaler, and of Jaehne, the boodle alderman. He occupied the place of prosecutor in a capital case but once. He argued the case of Rogers, as state counsel, before the Court of Appeals, carried up on the question whether intoxication is an absolution for the crime of murder, and secured Rogers’ conviction and hanging. He said afterward: “I have defended many a man for nothing to clear my conscience of the burden of sending Rogers to the gallows.”

In 1850 he was a candidate for district-attorney, but being bitterly

<sup>1</sup> Judge Charles P. Daly’s “Historical Sketch of the Judicial Tribunals of New York,” pp. 33, 35.

opposed by the elder Bennett, whom he attacked on the street, the campaign resulted in his defeat. He then resolved never again to be a candidate for public office. He was a member of the Law Institute, but refused to join any of the bar associations or social clubs and remained a bachelor. He was an eloquent speaker, but his great strength lay in the logic of his defences and his boldness.

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**GRAHAM, JOHN LORIMER** (born in London, England, March 20, 1797; died in Flushing, Long Island, July 22, 1876), was a son of Doctor John A. Graham, who early in the century was a practitioner in the criminal courts. He began the study of law in the office of Judge Tapping Reeve, of Litchfield, Connecticut, and completed it under John Anthon in New York, being admitted to the bar in 1821. He was prominent in the department of mercantile law, being successively at the head of the conspicuous firms of Graham, Noyes & Martin and Graham, Wood & Powers. He added largely to the fortune left him by his father, and became one of the wealthy men of the city. In 1834 he was appointed regent of the state university, and in 1840 postmaster of New York. In 1861 he accepted a confidential position in the treasury department at Washington, which he held for several years.

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**RANGER, FRANCIS** (born in Suffield, Connecticut, December 1, 1792; died in Canandaigua, New York, August 28, 1868), was a son of Gideon Granger (q. v.). At the age of nineteen he was graduated from Yale College, and preparing himself for the law he entered upon its practice at Canandaigua in 1814, soon gaining a position of prominence at the Ontario bar. Identifying himself with the whig party, he was repeatedly elected to the state legislature, and he became one of the chief leaders of the whig organization, being twice nominated for governor, although he was defeated both times. He was the unsuccessful whig candidate for vice-president of the United States in 1836. From 1839 to 1841 he served in the national house of representatives. He was appointed postmaster-general in the cabinet of President W. H. Harrison, resigning that office after the reconstruction of the cabinet by Tyler. Offered a foreign mission by the new president, he declined the place, and soon afterward he resumed his service in congress, remaining in that body till the close of the 27th congress. He was one of the most popular political leaders of his times and was on terms of intimate friendship with the most distinguished statesmen of that period. After leaving congress he retired to private life, but in 1861 he accepted an appointment from the governor of New York as a member of the peace convention held at Washington in February of that year.



**RANGER, GIDEON** (born in Suffield, Connecticut, July 19, 1767; died in Canandaigua, New York, December 31, 1822), was graduated from Yale College in 1787, was admitted to the bar, and for nearly fifteen years was a very prominent lawyer of Connecticut. He was a leading member of the legislature of that state, his name being especially identified with the origination of the school fund. In 1801 he was appointed postmaster-general in the cabinet of President Jefferson, a position which he held continuously for thirteen years. Retiring from that office in 1814 he settled in Canandaigua, New York. Although he did not resume in this state the active practice of the legal profession, he was prominent in its public affairs, being a member of the senate, in which body he gave valuable assistance to the internal improvement policy of his friend, De Witt Clinton. He was a political writer, publishing "Political Essays" over the signatures of Algernon Sydney and Epaminondas.



**RAY, HIRAM** (born in Salem, Washington county, New York, in 1801; died in Elmira, New York, May 6, 1890), was of Scotch-Irish descent. He was graduated at Union College in 1821, studied law in the office of Chief-Justice Savage at Salem, New York, and was admitted to practice in the Supreme Court in 1823. In 1825 he formed a copartnership with Theodore North, under the name of North & Gray, at Elmira, then the village of Newtown. In 1836 he was elected to the state senate, and after leaving that body he was appointed circuit judge and vice-chancellor of the 6th judicial district. He was elected a justice of the Supreme Court in 1847, and re-elected for a term of eight years in 1851. In 1869 he became a member of the commission of appeals, serving from January, 1870, until the termination of the commission's existence in 1875. In politics Judge Gray was a democrat. His long and important judicial career was marked throughout by ability and high integrity.



**REEN, ROBERT STOCKTON** (born in Elizabeth, New Jersey, March 25, 1831; died there, May 7, 1895), was descended from an eminent New Jersey family.<sup>1</sup> He was graduated from Princeton College in 1850 and admitted to the bar in 1853. As a young man he held several city and county offices. In 1862 he was elected surrogate of Union county, and in 1868 he became presiding judge of the Court of Common Pleas and the County Courts. He was appointed in 1873 by Governor

<sup>1</sup> His great-grandfather, Reverend Jacob Green, was elected president of the College of New Jersey in 1757, was chairman of the committee that drafted the New Jersey constitution in the provincial congress of 1775, and was an able writer. Jacob's son, Ashbel, was presi-

dent of Princeton College from 1812 to 1822, and wrote voluminously on religious subjects. The father of Robert S. was James S. Green, a New Jersey lawyer of prominence.

Parker one of the commissioners to suggest amendments to the state constitution. In 1886 he was elected governor of the state. Retiring from that office he received the appointment, in 1890, of vice-chancellor for a term of seven years; and in 1894 he was made judge of the Court of Errors to fill the vacancy caused by the death of William Walter Phelps.

Although Mr. Green's public career was confined to the State of New Jersey, of which he remained a citizen throughout his life, he practiced law in New York, being a member of the widely known firm of Vanderpoel, Green & Cuming.



**RIFFIN, EBENEZER** (born in Cherry Valley, New York, July 29, 1789; died in Rochester, New York), attended Union College, but did not graduate. He was admitted to the bar in 1811, and practiced for eight years at Clinton, New York, and then at Utica until 1825, when he removed to the City of New York. In 1842 he went to Rochester, where he spent the rest of his life. He was one of the best known advocates of his day, being connected with the famous Morgan abduction case, in which he defended Mather, charged with conspiracy, obtaining his acquittal.



**ROVER, MARTIN** (born October 20, 1812; died in Angelica, New York, August 23, 1875), was a law student in the office of Honorable William G. Angel, whose partner he afterward became in the firm of Angel & Grover. Like his preceptor, he struggled against great disadvantages in his youth, but after his admission to the bar he made his way steadily to a position of the first importance. In 1844 he was elected to congress. He was the free-soil candidate for attorney-general in 1853 but was defeated. He was elected justice of the Supreme Court in 1857 to fill a vacancy, and was re-elected for a full term in 1859. At the expiration of his service on that bench (1867) he was chosen associate-judge of the Court of Appeals, and in 1870 he was again elected under the amended judiciary article of the constitution of 1867.

Martin Grover enjoys a firmly established fame as one of the ablest judges of the State of New York. He was thoroughly grounded in the principles of the law and prompt and discerning in applying them.



**HACKETT, JOHN KETELTAS** (born in Utica, New York, February 13, 1821; died in New York City, December 26, 1879), was a son of James Henry and Katherine Hackett, both of whom were prominent figures in the theatrical profession of their generation. He was graduated from the University of the City of New York in 1837, and after studying for the legal profes-



sion in Utica was admitted to the bar in Albany. He removed to California in 1850 and lived there for seven years, during which he served the city of San Francisco as corporation counsel. Upon his return to this state he engaged in practice in New York City, of which he became corporation counsel in 1863 and recorder in 1866, filling the latter office with ability until his death.



SAFFORD, ROBERT (born in Chelsea, Vermont, September 24, 1822; died in Elizabethtown, Essex county, New York, December 14, 1881), was graduated in 1842 from the University of Vermont and was admitted to the bar in 1847 at Elizabethtown. He was a conspicuous lawyer and judge of his part of the state, being surrogate and judge of Essex county for eight years from 1856. He was also (1859-81) a regent of the University of the State of New York. He served two terms in congress (1865-67 and 1873-75). He was employed by the national government in important cases, being special counsel to defend abandoned and captured property claims (1868-70) and government agent and counsel before the American and British mixed commission (1871-73).



ALL, JOHN PRESCOTT (born in Pomfret, Connecticut, July 9, 1796; died in Newport, Rhode Island, September 29, 1862), was admitted to the bar soon after his graduation from Yale College (1817). He engaged in practice in New York City and was noted for his versatile abilities, especially for his eloquence as an advocate and public speaker. He published two volumes of "Reports of Cases in the Superior Court of the City of New York, 1828-29." In politics he was a whig, and he served as United States district-attorney in New York under Tyler and again under Fillmore.



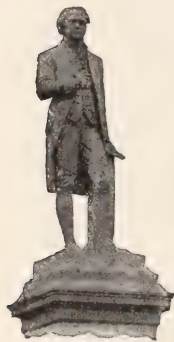
ALL, NATHAN KELSEY (born in Marcellus, Onondaga county, New York, March 10, 1810; died in Buffalo, March 2, 1874), was of very humble birth. His father was a shoemaker, and Nathan, as a lad, worked at that trade. He entered the law office of Millard Fillmore at Aurora, New York, at the age of eighteen, and four years later, having been admitted to the bar, he became Mr. Fillmore's partner in Buffalo. Later he was associated in the same firm with Solomon G. Haven. He held local offices in Buffalo, and was appointed by Governor Seward master in chancery in 1839 and judge of the Court of Common Pleas in 1841. He served a term in the assembly (1845) and in congress (1847 to 1849), and then returned to his professional practice. In 1850 he became postmaster-general in President Fillmore's cabinet, and from 1852 until his death he was United States judge of the District Court of northern New York.



ALL, WILLIS (born in Granville, New York, April 1, 1801; died in New York City, July 14, 1868), was graduated at Yale College in 1824, and after his admission to the bar in 1827 went to Mobile, Alabama, where he practiced law with success. In 1831 he returned to New York, and for a number of years he was active at the metropolitan bar. He was chosen to the assembly in 1837 and 1842, and was attorney-general of the state in 1838-39. In 1848 he retired. He was connected with a law school at Saratoga as a lecturer.



AMILTON, ALEXANDER (born in Nevis, an island of the West Indies, January 11, 1757; died in New York City, July 12, 1804), was, according to accepted tradition, the son of a Scotch merchant and a French Huguenot lady. Although the mystery of his birth has never been cleared up, the burden of evidence seems to support this tradition and not the story, which has found favor in some quarters, that his mother was an Englishwoman named Lytton. That he had French blood in his veins can hardly admit of doubt. The method of his writing when he became a man and his style in composition, which shows a French clarity, bespeak this. In the case of *Coulon vs. Bowne*, reported in 1 Caines' Term Reports,



STATUE OF ALEXANDER HAMILTON, ON KNOLL NEAR THE METROPOLITAN MUSEUM OF ART.

283, he made an argument on a matter involving the meaning of the word "since," which was used in an insurance policy. His client was a Frenchman and had used an equivalent French word. Hamilton showed to the court how the sentence would read in French, and did it in a style that conclusively demonstrated his innate familiarity with French. When he was an aide on Washington's staff, he was used by Washington as a medium to communicate orders to the commanders of the French allies. Besides, Hamilton himself often declared that his father was Scotch and his mother was French. Among his contemporaries the doubtful story that he was of illegitimate birth appears to have received considerable acceptance. John Adams, in a letter to Jefferson in 1813, styled him the "bastard son of a Scotch pedler." But, notoriously, Hamilton and Adams were not on the most friendly terms during the latter years of Hamilton's life. So far as the evidence goes, the presumption is that his mother's maiden name was Faucette and that she was married to his father.

His mother died while he was a child, and his father soon thereafter became bankrupt. His mother's relatives then took charge of him, and when about twelve years of age was placed by them in a

counting-room as clerk to a Nicholas Cruger in Santa Cruz. While serving in that capacity he displayed extraordinary ability for one so young. He appears to have managed all the affairs of his employer during the latter's temporary absence. At this time he wrote letters, still extant, which show extreme precocity. In one of them, addressed to an Edward Stevens, who was a student in King's College, New York City, he wrote: "I condemn the grovelling condition of a clerk, or the like, to which my fortune condemns me, and would willingly risk my life, though not my character, to exalt my station. I am confident, Ned, that my youth excludes me from any hopes of immediate preferment, nor do I desire it, but I mean to prepare the way for futurity." While he was acting as clerk he still continued to study, and laid the foundations for a sound literary culture, reading most of the standard authors, both English and classic. Plutarch was apparently his favorite author at this time. While he was in Santa Cruz there was a presbyterian minister there named Knox. He became acquainted with young Hamilton, and, noting his extraordinary powers of mind, used his influence among the boy's relatives to have him sent to college. Reverend Mr. Knox succeeded in raising sufficient funds to send him to the American colonies, and in October, 1772, he arrived



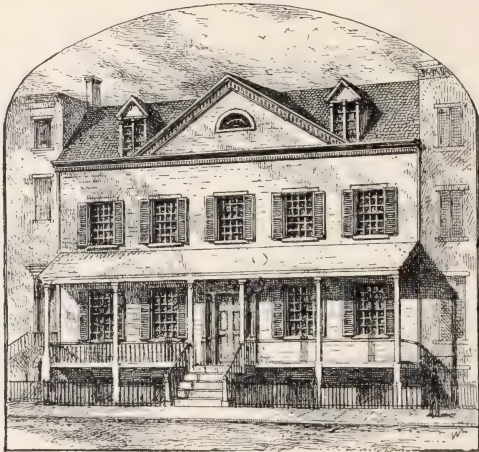
"THE GRANGE," HAMILTON'S RESIDENCE.

in Boston, whence he went to New York. There he presented his letters of introduction. At that time there was in Elizabethtown, New Jersey, a Latin school of quite considerable reputation, and Hamilton matriculated in it. It may be remarked as a curious coincidence that Hamilton's rival in after life, Aaron Burr, was then living with his uncle in the same town. After a year's study he was prepared to enter college. He first tried Princeton, but did not enter because he wanted to get his degree as rapidly as possible, and the rules of that institution required him to go through the routine of freshman, sophomore, junior, and senior. In 1773 he entered King's College, now Columbia, and prosecuted his studies with ardor.

Meantime the events of the coming Revolution were hurrying forward. The dominant sentiment of New York City was decidedly tory. The legislative assembly were all friends and staunch adherents of King George. But among the masses there was a slumbering feeling against monarchy. The assembly had been importuned to send repre-

sentatives to the first continental congress. They hesitated. A great meeting was held just outside New York City to urge on the assembly the necessity of falling in line with the other colonies in their opposition to the mother-country. Hamilton was present at this meeting and made a speech. He carried the day. Resolutions were adopted favoring the attitude Massachusetts had taken on the Boston port bill, and calling on the assembly to co-operate with the other colonies in their attitude on that measure. Hamilton also wrote pamphlets and articles in defence of American rights, which attracted wide attention. It is beyond question that young Hamilton contributed much of the force which sent New York into the continental congress.

Before the battle of Lexington was fought he began to study military tactics. Early in 1776 the New York convention ordered that a



BAYARD HOUSE, WHERE HAMILTON DIED.

military company be recruited. Hamilton applied for the command and was made captain on March 14, 1776, when nineteen years old. With his company he fought in the battle of Long Island, accompanied the main army in its retreat from New York City, and took part in the battle of White Plains. He also, with his company, was with the main army of Washington in its retreat across New Jersey, and was at the battle of Trenton. On March 1, 1777, he was appointed one of Washington's aides, with the rank of lieutenant-colonel. In this capacity he was employed by the commander-in-chief in the most important of military trusts. He attended to all of Washington's correspondence, and all the military orders went through him. The clear and forcible



English in which those orders were couched was due to Hamilton. One piece of conspicuous service which he rendered while aide was of a diplomatic rather than a military nature. He was sent to obtain troops from Gates after the Burgoyne campaign, and succeeded. While he was on this mission at Albany he first met his future wife, Elizabeth Schuyler, whom he married in 1780 while he was still on Washington's staff. As a staff-officer he attended Washington in all his battles and campaigns. One of the incidents of his staff life was his presence with Washington at West Point at the time of Arnold's flight. He has left a graphic picture of Mrs. Arnold's despair, which he witnessed in the Beverley Robinson house opposite West Point. In 1781 he resigned his commission in consequence of a reproof received from General Washington; but shortly afterward he received command of a New York battalion of infantry, and at the battle of Yorktown he charged the redoubts at the head of his troops. He then returned to New York City and prosecuted his law studies.

He was admitted to the bar in 1782. While a law student he was appointed continental receiver of taxes for New York, but resigned to take a seat in the continental congress, wherein he served in 1782-83. As a member of congress he was active in having peace restored with England and having the resulting treaty ratified. From 1783 to 1787 he was busy practicing law in New York City, but in addition to his extensive practice he occupied himself with schemes to replace the moribund continental congress. He wrote pamphlets, letters, and arguments in favor of a "more perfect union." He was chosen one of the New York delegates to the constitutional convention held in Philadelphia, and the part he took in that body belongs to the most important political history of the country. Hamilton bears the same relation to the present federal constitution that Jefferson does to the declaration of independence. No matter how the details of the scheme he proposed were changed by the convention, the salient features were retained, and are to-day regarded as the corner-stone in the construction of that instrument.

Hamilton retired to New York City after the labors of the convention were ended and wrote the remarkable series of articles in the *Federalist* in behalf of the adoption of the constitution. These articles were spread all through the thirteen colonies and exerted a great influence. He was made by Washington the first secretary of the United States treasury, and as such was the author of the funding system, the founder of the United States bank, and the moving spirit in favor of a central currency. As secretary he sent to congress a "Report on the Public Credit," in which he discussed every phase of the federal financial system, and which conclusively proves him to have been one of the very greatest of our public financiers. In January, 1795, he resigned from the cabinet and resumed the practice of the law in New York City. While practicing he still continued in touch with politics, and

by his advice the "Federal party" was formed. To him is attributed the authorship of Washington's "Farewell Address." In 1798, during the troubles with France, he was made inspector-general of the army, with the rank of major-general. In 1800 he was chosen president of the Cincinnati Society. When Jefferson and Burr had their tie vote in the electoral college, Hamilton used his influence with the representatives to have Jefferson chosen, which was done. This was the beginning of his fatal quarrel with Burr. Hamilton later prevented Burr from getting the support of the federalists for governor. It is not very profitable to inquire as to the right and the wrong of the Hamilton-Burr difficulty. Both were great men. Both were as ambitious as Cæsar. To lay the whole blame on Burr is not warranted by the facts. Hamilton was a fighting man, and his son had been killed in a duel a short time before his own death. The undisputed fact is that Hamilton, in the last four years of his life, had used the most violent language against Burr—such language as at that time warranted a challenge. The challenge was forthcoming and Hamilton accepted it. The parties met at Weehawken on July 11, 1804, and Hamilton was mortally wounded, dying the next day. He was thus cut off in his prime, being but forty-seven years old.

What he might have become as a public man and statesman had he lived longer is a matter of speculation, but it can be assumed as a matter of absolute certainty that he would have reached the pinnacle of human greatness as a lawyer had he continued to practice. The first five volumes of the New York Reports establish this. Although his arguments are meagrely reported, there is enough in them to show his wonderful grasp of principles. Chancellor Kent, before whom Hamilton argued cases while he was a judge of the Supreme Court, entertained the most exalted opinion of him. In an address made before the New York Law Association in 1836, the ex-chancellor thus spoke :

Among his brethren Hamilton was indisputably pre-eminent. He at once rose to the loftiest professional eminence by his profound penetration, his power of analysis, the comprehensive grasp and strength of his understanding, and the frankness, firmness, and integrity of his character. In reference to his associates we may say of him, as was said of Papinian, *omnes longo post se intervallo reliquerit*. I have always regarded Mr. Hamilton's argument near the close of his life, in the celebrated libel case of Crosswell, as his greatest forensic effort. The subject, of grave and lofty import, related to the liberty of the press, and to the right of a jury in a criminal case to determine the law as well as the fact. He never in any other of his cases at the bar commanded higher reverence for his principles or equal admiration of the power and pathos of his eloquence. I also heard him in our mutual youth, in January, 1785, when for the first time I attended a term of the New York Supreme Court, and saw and heard then, in one interesting suit brought to a hearing, how he commanded great attention by his powers of argument and oratory. Hamilton was then at the age of twenty-seven. He rose with firmness and dignity, and during two hours was fluent, argumentative, ardent, and accompanied with great emphasis of manner and expression. His speech was marked for a searching analysis of the case. He was resisting a motion for a new trial made as against

evidence where Hamilton at *nisi prius* had obtained a verdict rather by the force of his character and the charm of his eloquence than by preponderance of proof.

Again, in his Commentaries, Chancellor Kent thus speaks of Hamilton :

If we take the Reports of New York in chronological order, we shall find that the first five volumes occupy the period when Alexander Hamilton was a leading advocate at our bar. That accomplished lawyer (for it is in that character only that I am now permitted to refer to him) showed, by his precepts and practice, the value to be placed on the decisions of Lord Mansfield. He was well acquainted with the productions of Valin and Emerigon; and if he be not truly one of the founders of the commercial law of this state, he may at least be considered as among the earliest of those jurists who recommended those authors to the notice of the profession and rendered the study and citation of them popular and familiar. His arguments on commercial as well as on other questions were remarkable for freedom and energy; and he was eminently distinguished for completely exhausting every subject which he discussed, and leaving no argument or objection on the adverse side unnoticed and unanswered. He traced doctrines to their source, or probed them to their foundations, and at the same time paid the highest deference and respect to sound authority. The reported cases do no kind of justice to his close and accurate logic, to his powerful and comprehensive intellect, to the extent of his knowledge, or the eloquence of his illustrations. We may truly apply to the efforts of his mind the remarks of Mr. Justice Buller, in reference to the judicial opinions of another kindred genius, that "principles were stated, reasoned upon, enlarged, and explained until those who heard him were lost in admiration at the strength and stretch of the human understanding."

And still again, in his Commentaries, Kent says :

A very able discussion of the assumed right to confiscate debts [the claim of a right to confiscate debts, contracted by individuals in time of peace and which remain due to subjects of the enemy at the declaration of war] was made by Mr. Hamilton in the numbers of *Camillus*, published in 1795. He examined the claim to confiscate private debts, or private property in banks or in public funds, on the grounds of reason and principle, on those of policy and expediency, on the opinion of jurists, on usage, and on conventional law; and his argument against the justice and policy of the claim was exceedingly powerful. He contended it to be against good faith for a government to lay its hands on private property, acquired by the permission or upon the invitation of the government, and under a necessarily implied promise of protection and security.

If any further evidence is needed to support the claim that Hamilton was the foremost practicing lawyer of his time, the case of *Rutgers vs. Waddington*, tried in the Mayor's Court of the City of New York in 1784 before Mayor Duane when he was only twenty-seven years old and had been at the bar only two years, may be instanced. This case brought under discussion the powers of the confederated states and the rights of the individual states, and is especially interesting as it first drew Hamilton's attention to the consideration of principles growing out of the union of the states and the establishment of independence—principles which he afterward elaborated in the discussion in the national convention of 1787, and which were embodied in the constitution of the

United States. The case was this: On March 17, 1783, an act was passed by the New York legislature, providing that any one who, by reason of the invasion of the enemy, had left his place of abode, might bring an action of trespass and recover damages against any person who had occupied it, or who had injured his real or personal property, or against any one who had received his goods or effects while the same were under the control of the enemy; and prohibiting the defendant from pleading or giving in evidence, as a defence, that the property was occupied, injured, or destroyed by a military order or command. The action, which was the first under the statute, was brought to recover six years' rent for the occupation by the defendant of a brew-house in New York City, while that city was in the possession of the British. The defendant pleaded the possession of the city by the British army; a license from the commissary-general to him, a British subject, to use and occupy the place, and also a direct authority from Sir Henry Clinton, the commander-in-chief, to so occupy it; and finally the treaty of peace, ratified at Annapolis on January 14, 1784, by which all claims that the citizens or subjects of either of the contracting parties might have against the other for indemnity were relinquished. The plaintiff demurred.



HAMILTON MONUMENT.

Hamilton was retained by the defendant and made the principal argument, although several great lawyers were associated with him on behalf of the defendant. He contended that the act of the legislature was in violation of the law of nations, which being part of the common law had become by the state constitution the law of the state, and followed it up by an elaborate and masterly exposition of the rights of war and of the relation of belligerents to each other, in their capacity as individuals, when the war is put an end to. He claimed that the defendant was covered and protected by the treaty, and insisted that it was not in the power of the state to deprive him of that which the treaty had secured to him. Mayor Duane, in his opinion, upheld Hamilton's position and decided that the statute was unconstitutional. This was probably the first case in which an American court pronounced a statute unconstitutional, so it may be seen that *Marbury vs. Madison* was not the first case in which the constitution was invoked against a statute.<sup>1</sup>

After Hamilton retired from Washington's cabinet he accumulated a large mercantile practice, his familiarity with shipping, acquired when a boy, being of great assistance to him. The cases of *Barnewell vs. Church*, *Lawrence vs. Van Horne*, *Coulon vs. Bowne*, and *Maggrath vs. Higgins*, all reported in *Caines' 1st Term Reports*, are important ones dealing with questions arising under policies of insurance. The

<sup>1</sup> See Judge Daly's "Historical Sketch of the Judicial Tribunals of New York," pp. 60-62.



two latter cases are instructive as showing Hamilton's trained mind and how he was capable of making fine and subtle distinctions, as also his grasp of the philological meanings of words. In one of these there had been a representation to the effect that "Mr. Coulon is a naturalized citizen of the United States *since* the year 1794." It was contended that this vitiated the policy because Coulon after naturalization had ceased to be a citizen. Hamilton argued, and the court sustained him, that the representation only meant that Coulon was naturalized since 1794, but it was not necessary for him to have been a citizen "ever since." The case of *Henderson vs. Brown*, in 1st Caines' Term Reports, is also an important one. The defendant was collector of the direct continental tax, and entered a theatre and distrained money in that capacity. He was sued in trespass. Hamilton contended that a state court could not enter into any examination of the acts of the mere ministerial officers of the general government, acting under their revenue laws. The Supreme Court sustained Hamilton's position. Kent was one of the judges who rendered opinions in this case.

During Hamilton's practice at the New York bar he had for contemporaries Aaron Burr, Colonel Troup, Edward Livingston, Brockholst Livingston, Egbert Benson, Morgan Lewis, and Josiah Ogden Hoffman.



HAMILTON, ALEXANDER (born in New York City, in January, 1816; died at his country place, "Nevis," near Irvington, New York, December 30, 1890), was the son of James Alexander Hamilton (q. v.) and grandson of the famous Alexander Hamilton. His mother was a daughter of Robert Morris, nearly related to Gouverneur Morris. General Philip Schuyler was his great-grandfather. He was educated at West Point, standing second in a class of fifty when his father withdrew him in his fourth year at the academy. The subsequent two years were spent with his family in Europe. After his return, Washington Irving having been appointed minister to Spain, Mr. Hamilton accompanied him as secretary of legation and later became *chargé d'affaires*. In May, 1844, he left Spain, and after short sojourns in France and England returned to New York to pursue the study of law.

Mr. Hamilton soon took rank among the recognized lawyers of New York City. He made a specialty of marine insurance, and in this branch—in which his eminent grandfather also excelled—he was considered an authority. His large corporation practice included such clients as the General Mutual Insurance Company, the New Haven Railroad Company, the Havre Steamship Company, the London, Liverpool and Globe Insurance Company and the Orient Mutual Insurance Company. Mr. Hamilton distinguished himself in the cases, in the United States Supreme Court, of the Orient Insurance Company, Plaintiff in Error, *vs.* Wright (23 Howard, 401) and the Insurance Companies *vs.*

Wright (1. Wallace, 456). Among his other notable cases were *Bargett vs. the Orient Insurance Company* (3 Bosw., 385), *Bunker vs. the same* (8 Bosw., 448), *Day vs. the Orient* (1 Daly, 13), and *Ogden vs. the General Mutual Insurance Company* (9 Duer, 204).

Upon the outbreak of the civil war Mr. Hamilton promptly enlisted and served on the staff of Major-General Wood. Loss of health forced him to resign at the expiration of three months' service, however, although he was active in enlisting troops and forwarding supplies until the close of the war. He was president of the Knickerbocker club of New York City, which he was chiefly instrumental in founding, president of the board of trustees of the Astor library, vice-president of the Society of the Cincinnati, and a member of the Association of the Bar.



**HAMILTON, ANDREW** (born in Scotland about 1676; died in Philadelphia, August 4, 1741), although a Philadelphia lawyer, never connected with the bar of New York, owes his enduring reputation mainly to his conduct of and triumph in the famous Peter Zenger case, tried in New York City in 1734-35. There has been much historical speculation as to his parentage, but that question has never been settled satisfactorily. He appeared in Accomack county, Virginia, in 1697, as the manager of a plantation, and afterward married the widow of its proprietor. Having removed to Philadelphia, he became attorney-general of Pennsylvania in 1717. He was a member of the provincial council from 1721 to 1724, was appointed prothonotary of



VIEW OF NEW YORK, ABOUT 1730.

the Supreme Court and recorder of Philadelphia in 1724, and was a member of the assembly for Bucks county from 1724 to 1739, being its speaker (with the exception of one year) during the last ten years of his service. The ground on which the state-house, afterward Independence Hall, was erected was purchased by him and his son-in-law, Allen, in 1729, as a spot on which to construct a suitable building for a legislative hall.

Andrew Hamilton's connection as counsel with the Zenger case was wholly voluntary, without fee or reward of any kind—a circumstance which may quite reasonably be instanced as a very practical support of the claim made in his address to the Pennsylvania assembly in 1739, that it was love of liberty which drew him to the colonies and caused him to abide in them. Peter Zenger, publisher of the *New York Weekly Journal*, had been placed on trial by the New York authorities for seditious libel because of the free criticisms of official acts which he had printed in his newspaper. His lawyers, James Alexander and William Smith, had been disbarred because of their contention, in court, that the judges were illegally commissioned and therefore not competent to try the cause. Meantime other counsel had been assigned by the chief-justice (De Lancey) to the accused in their stead. Hamilton, taking a keen interest in the case, and apprehensive that the new counsel would not have the courage to manage it according to its merits, assumed charge of it, advancing the argument that the truth of the facts in the alleged libel could be set up as a defence and that the jury were judges of both the law and the facts—a principle of law not then established in England. Although evidence as to the truth of Zenger's publications was ruled out, Hamilton's line of defence and his eloquent address completely won the jury, and a verdict of not guilty was rendered. He was greeted with great acclaim by the people of New York, and throughout the colonies the importance of the victory he had won for the liberty of the press was fully appreciated. Gouverneur Morris called him "the day-star of the American Revolution." He was presented with the freedom of the City of New York, and a resolution was passed by the common council thanking him for his services.

*A. Hamilton*



**HAMILTON, JAMES ALEXANDER** (born in New York City, April 14, 1788; died in Irvington, New York, September 24, 1878), a son of Alexander Hamilton, was graduated at Columbia College in 1805, served in the war of 1812 as brigade major and inspector of New York state militia, and engaged in the practice of the law. He was a respectable figure at the New York bar, and in 1829 became United States district-attorney for the southern district of the state.



**HAMILTON, JOHN CHURCH** (born in Philadelphia, August 22, 1792; died in Long Branch, New Jersey, July 25, 1882), another son of Alexander Hamilton, was graduated from Columbia College, was aide-de-camp to General Harrison for a brief time in the war of 1812, and became a lawyer in New York. He devoted a large part of his life to literary labors in connection with

the events of his father's career, publishing a "Life of Alexander Hamilton" (1832-40, 2 vols.) and a "History of the Republic of the United States, as Traced in the Writings of Alexander Hamilton and His Contemporaries" (1850-58).

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HAMILTON, PHILIP (born in New York City, June 1, 1802; died in Poughkeepsie, New York, July 9, 1884), another son of Alexander Hamilton, studied and practiced law, becoming assistant-district-attorney in New York City and judge advocate of the naval retiring board in Brooklyn.

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HAND, AUGUSTUS C. (born in Stoneham, Vermont, September 4, 1803; died in Elizabethtown, New York, March 8, 1878), obtained his legal education at Litchfield, Connecticut, and, removing to Elizabethtown, New York, engaged in successful practice, receiving in a brief time the appointment of surrogate of Essex county. He gradually built up a reputation as one of the ablest jurists of that part of the state. From 1839 to 1841 he was a democratic member of congress, and from 1845 to 1848 served in the senate of New York, being chairman of its judiciary committee. He was a justice of the Supreme Court and judge of the Court of Appeals from 1848 to 1855, but was defeated when a candidate for re-election. From the time of his retirement from the bench until his death he devoted himself to professional practice.

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HAND, SAMUEL (born in Elizabethtown, New York, in 1834; died in Albany, May 21, 1886), a son of the preceding, was graduated from Hamilton College at an early age, and entered the law office of his father in Elizabethtown, where he remained until 1860. He then formed a partnership with John V. L. Pruyn at Albany, and upon Mr. Pruyn's retirement in 1861 became the junior partner of the firm of Cagger, Porter & Hand, which was changed to Cagger & Hand in 1865 upon Mr. Porter's elevation to the bench. The firm again changed in 1865 with the tragic death of Mr. Cagger, Matthew Hale being admitted, and later Nathan Schwartz and Charles S. Fairchild were admitted. The death of Mr. Schwartz and the election of Mr. Fairchild to office left Mr. Hand and Mr. Hale alone in partnership, which continued without further change until dissolved by mutual consent a few years prior to Judge Hand's death.

Mr. Hand in 1866 was counsel for the city of Albany, and from January, 1869, to March, 1872, he was reporter of the Court of Appeals. In June, 1878, he was appointed by Governor Robinson to fill the vacancy on the Court of Appeals bench caused by the death of Associate-Judge



Allen. He held this position until succeeded by Judge Danforth, who was elected in the fall of 1878. He was a member of the charter commission, by appointment of Governor Tilden, of which William M. Evarts was chairman. Although in later years repeatedly offered honorable and lucrative posts, he steadfastly declined them.

He was recognized as one of the most successful practitioners of his day before the Court of Appeals. His style was clear and forcible, and though not an eloquent speaker he always held attention. He took a prominent part in the Dudley will case, was senior counsel in all the elevated railroad cases of 1876, and was principal counsel for the state *against* Belden and the canal contractors.



**HARRISON, RICHARD MORLEY** (born in New York City, September 23, 1833; died in Astoria, Long Island, December 22, 1895), was descended from a distinguished legal family.

He was graduated in 1852 at Hobart College, and after studying law with Orlando Mead, of Albany, entered the Albany Law School, from which he graduated in 1859. He began practice in New York in association with his brother, George L. D. Harrison, and Gouverneur M. Ogden, his father's former partner. In 1866 he formed a partnership with Honorable Alexander W. Bradford, and upon Judge Bradford's death with Julien T. Davies. Later he joined the firm of Varnum & Turney, which became successively Varnum, Turney & Harrison and Varnum & Harrison. He was one of the founders of the Association of the Bar and of the Lawyers' Title Insurance Company.



**HARRINGTON, EBENEZER BURKE** (born near Lyons, Wayne county, New York, in 1813; died in Detroit, Michigan, in 1844), was a prominent legal compiler in this state and Michigan, and although he died at the early age of thirty-one performed valuable work. He was admitted to the bar in 1837, but had previously, with the collaboration of Oliver L. Barbour, prepared a digest of equity cases, American and English, which was published at Saratoga. He did not actively practice law in the State of New York, removing soon after his admission to the bar to Michigan, where he assisted E. J. Roberts in arranging and indexing the state laws, and from 1839 until his death served as state reporter, publishing "Harrington's Chancery Reports" (Detroit, 1844).

<sup>1</sup> His father, William H. Harrison, was a highly respected practitioner in New York, retiring in the early forties.

His grandfather was a very eminent lawyer of the period immediately following the Revolution, was the first United States district-attorney for the New York district (appointed by Washington), and was recorder of the city for many years.

His great-grandfather, George Duncan Ludlow, was

colonial judge of the New York Supreme Court, and subsequently chief-justice of New Brunswick.

His maternal grandfather, Thomas Ludlow Ogden, was an eminent chamber counsellor, and the latter's father, Abraham Ogden, was United States attorney for the district of New Jersey, and was the son of David Ogden, judge of the Supreme Court of the Province of New Jersey.



HARRIS, IRA (born in Charleston, Montgomery county, New York, May 31, 1802; died in Albany, December 2, 1875), was the eldest son of Frederick Waterman Harris and Lucy Hamilton.<sup>1</sup> Both his parents were natives of the state. He attended an academy at Homer, New York, and was graduated from Union College, with the first honors, in 1824. He studied law in the offices of Augustus Donnelly at Homer and Chief-Justice Ambrose Spencer at Albany, being admitted to the bar in 1827 and commencing practice in Albany, soon after associating himself with Salem Dutcher. Afterward he was in partnership with Julius Rhodes. He gradually worked his way to the front rank of practitioners, especially excelling in equity practice. He was chosen a member of the legislature in 1844 and of the constitutional convention in 1846. In the latter body he was prominent in advocating amendments securing to married women their rights in property inherited and acquired, establishing an elective judiciary, uniting law and equity jurisdiction, and providing for the simplification of pleadings and practice in the courts. In the fall of 1846 he was elected to the state senate, but resigned his seat the next spring to become a justice of the State Supreme Court. To this office he was re-elected in 1851 for a term of eight years. On the bench he displayed superior judicial qualities, being conspicuously fair, lucid in his exposition of the law, and industrious in the dispatch of business.

In 1861 he was elected by the legislature, after an exciting contest—his competitors being William M. Evarts and Horace Greeley,—to represent New York in the senate of the United States. In the senate he served on the committees on foreign relations, on the judiciary and on the southern states. He was a close personal friend of President Lincoln, and gave strong support to the great measures of policy. But though an ardent republican, he manifested a dispassionate spirit on a memorable occasion, opposing the effort to expel Senator Bright of Indiana for his action, just before the war, in writing to Jefferson Davis a letter introducing a friend who wished to dispose of what he regarded as a great improvement in firearms. He retired from the senate upon the expiration of his term in 1867. In that year he was a member of the New York constitutional convention. Withdrawing from all public employments, he became a lecturer in the Albany Law School (with which he had been connected more or less since 1850), and during the remainder of his life devoted himself to the duties of that position. Throughout his career he took an especial interest in educational work, being identified in an active or honorary capacity with various institutions.

<sup>1</sup> Honorable Hamilton Harris, the distinguished jurist of Albany, is his brother.



**ASBROUCK, ABRAHAM BRUYN** (born in Kingston, New York, in November, 1791; died there, February 23, 1879), was graduated from Yale College in 1810 and was admitted to the bar in 1813 after studying at Hudson, New York, and at Litchfield, Connecticut. He opened a law office at Kingston and was a prominent practitioner there, taking also an interest in politics. He served a term in congress from 1825 to 1827. He was an excellent scholar and was prominent in religious work and in promoting historical research. From 1840 to 1850 he was president of Rutgers College, and he also served as vice-president of the American Bible Society and president of the Ulster county Historical Society.



**HATHEWAY, SAMUEL GILBERT** (born in Freetown, Cortland county, New York, January 18, 1810; died in Solon, New York, April 16, 1864), was the son of Major-General Samuel G. Hatheway and Sally Emerson.<sup>1</sup> He enjoyed excellent educational advantages, being graduated from Union College at the age of twenty-one. He then entered the law office of Honorable Jonathan L. Woods at Cortland, and continued and completed his professional studies under Honorable Hiram Gray at Elmira, being admitted to the bar in 1836. He formed a legal copartnership with Honorable James Dunn, of Elmira, which, however, lasted for only one year, after which he established an association with his former preceptor, Judge Gray. This continued until 1846, when Judge Gray was appointed to the circuit bench of the state. Mr. Hatheway thereupon connected himself with Honorable A. S. Diven and James L. Woods in the firm of Diven, Hatheway & Woods. This soon became one of the most prominent and successful legal firms in the state, and it was dissolved only by the death of Colonel Hatheway.

His legislative career was confined to the state assembly in 1842 and 1843. In the assembly of 1843 he was conspicuous for his advocacy of a bill providing for the completion of the unfinished public works. He was nominated by the democratic party for congress in 1856 and 1862, but was defeated. He served in the war as colonel of the 141st regiment of New York state volunteers, resigning in 1863 in consequence of a pulmonary disease which soon afterward caused his death.

He was a man of large wealth and had refined tastes, especially in literature. At the bar he was most eminent as an advocate before a jury.

<sup>1</sup> Samuel Gilbert Hatheway, the elder, was born in Freetown, Massachusetts, in 1780, and died in Solon, New York, May 2, 1867. He was descended from a very old English family, one of his ancestors being Sir Humphrey Gilbert. He was a pioneer of Cortland county, New York, settling there in 1808. He was a

member of the assembly in 1814 and 1818, state senator in 1823, member of congress from 1833 to 1835, and major-general in the state militia (commissioned in 1823). He was a highly influential man in central New York, a prominent democrat, and a friend of Andrew Jackson and Martin Van Buren.



HAVEN, SOLOMON GEORGE (born in Chenango county, New York, November 27, 1810 ; died in Buffalo, New York, December 24, 1861), was the son of a farmer, but received a substantial elementary education, upon which he enlarged by subsequent study. He at first contemplated entering the medical profession, but changed his design and undertook the study of law at Geneseo under the direction of General John Young, afterward governor of New York. From Geneseo he removed to Buffalo in 1835, where he finished his preparation for the bar in the office of Millard Fillmore, and the next year he was admitted to Mr. Fillmore's firm, which thereupon became Fillmore, Hall & Haven. He filled important local offices, being successively commissioner of deeds, district-attorney of Erie county, and mayor of Buffalo. He was a prominent whig and republican member of congress, serving from 1851 to 1857.



AWKINS, DEXTER ARNOLD (born in Camden, Maine, June 23, 1825 ; died in New York City, July 24, 1886), was graduated at Bowdoin College in 1848. He devoted a number of years to educational activities, delivering lectures before teachers' institutes, serving for a time as principal of Topsham academy, and travelling abroad, under a commission from the governor of Maine, for the purpose of examining European methods of instruction. He studied law at Harvard and later at the *École des droits* in Paris, entering upon its practice in New York in 1854. Throughout the rest of his life, which was spent in the City of New York, he devoted much of his attention to educational and economic subjects and the questions of the day, being effective both as a speaker and a writer. He was instrumental in the founding of the federal bureau of education, and through his intelligent efforts various changes in the interest of progress were instituted in New York state legislation. An amendment to the constitution prohibiting donations of public property to private corporations (1873) was largely the result of a pamphlet written by him. In 1871 he wrote a report on the "Extravagances of the Tweed Ring," which preceded the *Times* exposures and helped to cultivate the strong public sentiment that soon afterward overwhelmed the ring. His published writings comprise also works on free trade and protection, the money question, and sectarian appropriations.



AWLEY, WILLIAM MERRILL (born in Delaware county, New York, August 23, 1802 ; died in Hornellswille, New York, February 9, 1869), was the son of an early settler of western New York, and had only very limited educational opportunities. At the age of twenty-two, being elected a constable, he decided to obtain some knowledge of the law so as to be better fitted



for the discharge of his official duties. In 1826 he was admitted to the bar, and in 1827 he engaged in practice in Hornellsville. Here he became prominent, and nine years later he was appointed the first judge of Steuben county. He represented the county as a democrat in the state senate. At the democratic national convention of 1848 he was one of the free-soil element which subsequently nominated Martin Van Buren for president on a separate platform. Aside from his services as a state senator and a county judge he held no offices of importance. He gained a large and lucrative practice at the bar, and was highly esteemed for his abilities and personal qualities.



**FERRING, ELBERT** (born in Stratford, Connecticut, July 8, 1777; died in New York City, February 20, 1876), was an eminent lawyer at the New York bar in the early part of the nineteenth century. He was the legal preceptor of men who afterward become highly distinguished, one of them being Charles O'Connor. He was graduated in 1795 at Princeton College. He held several prominent offices: was judge of the Marine Court for three years from its creation in 1805, and later was again called to that bench; was the first register of the state of New York, serving for five years from 1812, under appointment by De Witt Clinton, who was his personal friend; and was the first commissioner of Indian affairs (1832-36). He lived to be nearly ninety-nine years old, and preserved his faculties and health to the end of his life; but for more than thirty years he lived in retirement.



**WICKS, WHITEHEAD** (born in Flushing, Long Island, August 24, 1728; died there, in October, 1780), was one of the leading lawyers of the colonial bar of New York. He practiced in the City of New York, being admitted in 1750. From 1752 to 1757 he was clerk of Queens county, and from 1766 to 1776 mayor of New York. In December, 1775, he was appointed judge of the Supreme Court, but he never took his seat. With Horsmanden, Ludlow, Samuel Jones, John Tabor Kempe and Benjamin Kissam he signed (October 16, 1776) a petition to Lord Howe for the restoration of civil power in the place of military rule. He was of a jovial disposition, and popular with his brethren of the bar and with the public.



**HILL, NICHOLAS** (born in Florida, Montgomery county, New York, October 16, 1806; died May 1, 1859), was a son of Reverend Nicholas Hill, a revolutionary soldier and a man of sterling qualities, who was of the third generation from Adam Hill, born in county Derry, Ireland. Nicholas Hill, Junior, after teaching school for some years, was admitted to the bar, 1829,

and began practice at Amsterdam, New York, in partnership with Deodatus Wright. Later, becoming associated with Esek Cowen, of Saratoga, he assisted him in the preparation of the "Notes to Phillips on Evidence." This period of Mr. Hill's life, says a biographer, was one of incessant, laborious industry. He was appointed in 1836 by the Court of General Sessions district-attorney of Saratoga county, but resigned the next year. From 1840 to 1845 (when he resigned) he was state reporter, publishing in that time seven volumes of reports of the Court of Errors and the Supreme Court. These are models of conscientious and intelligent reporting. He next formed a legal copartnership at Albany with Peter Cagger, in which Honorable John K. Porter soon joined, the firm becoming Hill, Cagger & Porter. From 1845 until his death he devoted himself mainly to the arguing of causes on appeal, and it is said that he argued a greater number of causes in the Court of Appeals than any other lawyer of the state in the same period.

Nicholas Hill was one of the great New York lawyers of his day. A memorial prepared by a committee of the bar thus characterized him: "It is not too much to say that by the common consent of the bar Mr. Hill stood foremost among the first." He had no taste for jury practice, and indeed it is said of him that he was never known to sum up a case before a jury. Moreover, in his peculiar field he owed nothing to eloquence, for he was without the oratorical temperament. The clearness and force of his arguments constituted his sole reliance.



OBART, JOHN SLOSS (born in Fairfield, Connecticut, in 1738; died February 4, 1808), was a prominent lawyer of the later colonial bar and held important judicial offices during and after the Revolution. Graduating from Yale in 1757, he prepared himself for the bar and entered upon practice in this state. At the outbreak of the revolutionary troubles he took the patriot side, being a member of the provincial convention of 1775 and having a hand in the drafting of the original constitution of the state. After the war he was a judge of the Supreme Court. In 1798 he was chosen to represent New York in the senate of the United States, but soon resigned the office to accept the position of United States district judge.



OBIE, SELAH R. (born in Newburgh, New York, March 10, 1797; died in Washington, D. C., March 23, 1854), commenced his legal career in the town of Delhi, Delaware county, and became prominent both professionally and politically in that part of the state. He was district-attorney of Delaware county from 1823 to 1827, was a brigade-major and inspector of militia, and was a democratic member of congress from 1827 to 1829. From 1832 until his death, with an intermission of but two years, he was one of the assistant-postmasters-general of the United States.



OFFMAN, JOHN THOMPSON (born in Sing Sing, New York, January 10, 1828; died in Wiesbaden, Germany, March 24, 1888), was graduated at Union College in 1846, and after three years of study was admitted to the bar, establishing an office in the City of New York, where he enjoyed much success in his profession. Later he became active in politics as a democrat, and from the beginning of the war he was constantly in public life. In 1860 he was elected recorder of the city, and he was again elected to that office in 1863. As recorder, although a democrat, he dealt sternly with the draft rioters. He was twice elected mayor of the city (1865 and 1867). He was three times the democratic candidate for governor, and was twice elected (1868 and 1870). During his second gubernatorial term occurred the exposures of the Tweed ring and its consequent downfall. In that eventful period he was an object of strong criticism in the press. After the completion of his service as governor he retired from active life.



OFFMAN, JOSIAH OGDEN. See page 141 of this volume.



OFFMAN, MURRAY (born in New York City, September 29, 1791; died in Flushing, Long Island, May 17, 1878), a son of Josiah Ogden Hoffman, was graduated from Columbia College in 1809, and afterward was admitted to the bar and practiced law in New York City. In 1839 he was appointed assistant-vice-chancellor, which office he held till 1843. In 1853 he was appointed judge of the Superior Court of New York City, and he remained on that bench till 1861. He was a voluminous writer on legal topics. Some of his works are: "Offices and Duties of Masters in Chancery," "Treatise on the Practice of the Court of Chancery," "Treatise on the Corporation of New York as Owners of Property," "Compilation of the Laws Relating to the City of New York," "Vice-Chancery Reports," "Provisional Remedies," "Treatise on the Law of the Protestant Episcopal Church in the United States," and "Ecclesiastical Law."



OFFMAN, OGDEN (born in New York City, May 3, 1793; died there, May 1, 1856), was a younger brother of the preceding. He graduated with honors at Columbia College in 1812. After his graduation he joined the navy and was taken prisoner with Decatur, under whom in 1815 he served in the war on the Barbary states. He left the navy in 1816 and went to Orange county, New York, where his father owned a country residence, and began the study of the law. He made the acquaintance of William H. Seward, who at that time lived in Orange county. He was admitted to the bar

at Goshen, New York, and practiced there a few years. In 1823 he was appointed district-attorney of Orange county, and in 1825 he was elected by the democrats to the legislature. He afterward removed to New York City, where he practiced in partnership with Hugh Maxwell. He joined the whig party on account of President Jackson's removal of the deposits from the United States bank. He was elected to the legislature in 1828, and subsequently became district-attorney of New York county. In 1836 he was chosen a representative to congress and was re-elected in 1838, and afterward (1841-45) became district-attorney for the United States in the southern New York district. The last office he held was attorney-general of the state.

He has been styled the Erskine of the American bar. He was probably the most consummate criminal lawyer that America has produced. He was polished, suave and courteous, and never resorted to bullying or browbeating witnesses, or to any of the other unprofessional tricks so common among the limbs of the criminal bar. One of the celebrated cases he took part in was where a young man named Robinson had been indicted for the murder of Helen Jewett, a gay woman. The prisoner was acquitted wholly owing to Hoffman's eloquence and tact, the evidence against him being apparently overwhelming. Besides the criminal cases he was engaged in, he also had a large civil practice. He was among the lawyers employed in the trial of the Parish will contest. This case probably occupied the attention of more eminent lawyers than any other ever tried in New York City. Such lawyers as O'Connor, Lord, Dwight and Dillon took part in it. Mr. Hoffman made his last forensic effort in this suit. He died poor, because of his generous disposition and his unwillingness to see unfortunate people in distress. One of his sons was the United States district judge in California from the time of its admission to the union until 1891.



**HOGAN, WILLIAM** (born in New York City in 1792; died in Washington, District of Columbia, about 1875), was graduated at Columbia College in 1811, pursued legal studies, and removed to the Black river region, where he became active in opening undeveloped resources, the town of Hogansport, on the Saint Lawrence river, being named for him. He served as a county judge and a Jacksonian member of congress. In 1850 he entered the state department as examiner of claims, and later he became a government translator, continuing in that position until 1869.



**HOGEBOOM, HENRY** (born in Columbia county, New York, in 1808; died in Hudson, New York, September 12, 1872), was graduated at Yale College in 1827, and rose to prominence at the bar of New York state soon after his admission (1830). He carried on his practice in Hudson, where in 1831 he became master



in chancery and county judge, and in 1839 was chosen to the legislature. He was defeated as a candidate for supreme judge in 1847 and 1849, but was elected in 1857 and re-elected in 1865, meantime sitting for a while on the Court of Appeals bench. He was very able and successful as a lawyer and decidedly clear-minded and discriminating as a judge. His opinions are conspicuous also for the quality of a forcible and pleasing style.



**OPKINS, SAMUEL MILES** (born in Salem, Connecticut, May 9, 1772; died in Geneva, New York, March 9, 1837), was graduated in 1791 from Yale College, and two years later began to practice law in Oxford, New York, whence he removed to the City of New York in 1794. He advanced there to professional prominence, and also held important offices, being a representative in congress from 1813 to 1815, and a member of the assembly from 1820 to 1827. In 1821 he took up his residence in Albany, and from 1832 to 1836 was a judge of the Circuit Court of the state. He published in 1827 a volume of chancery reports, and he was a writer on various legislative and social subjects.



**ORSMANDEN, DANIEL** (born in Gouldhurst, Kent, England, in 1691; died in Flatbush, New York, September 28, 1778), was the last royal chief-justice of the province of New York, succeeding De Lancey. He became a member of the city council of New York, May 23, 1733, and was appointed recorder of the city in 1736, puisne judge of the Supreme Court in 1737, and chief-justice March 16, 1763. He was a partisan of De Lancey and, as a member of the council, supported Governor Cosby against Zenger and Van Dam. For this conduct, and for his opposition to Governor Clinton, he was suspended from the council in September, 1747, and removed from the offices of recorder and Supreme Court judge. But on breaking with De Lancey he became reconciled to Governor Clinton, and was restored to the bench July 26, 1750. In 1741 he was designated by the assembly to codify the laws in operation in the province, but in consequence of ill-health was unable to perform the work. He was one of the judges who presided in the celebrated "Negro Plot" trials, and published a pamphlet justifying the convictions.<sup>1</sup> In the case of *Force vs. Cunningham*, in the fall of 1764, he maintained the unconstitutionality of the king's authorization of an appeal from the civil judgments of the Supreme Court to the governor and his council. Before the Revolution, and during its progress until his death, he was a loyalist. He was appointed in 1773

*Dan Orsmenden*

<sup>1</sup> See pp. 85-86 of this volume.

a commissioner to inquire concerning the burning of the king's ship *Gaspé* by a party of whigs. He disapproved the declaration of independence, and was one of the thousand signers of the petition of 1776 to Lord Howe by the residents of the City and County of New York.

As a barrister Horsmanden was not a success, being very much harassed by debts when not in official position. In the last several years of his service on the bench the annoyances consequent upon his superannuation were peculiarly felt by the legal profession; and the provision inserted in the first constitution of the state, establishing an age limit of sixty years for judges, was directly due to that circumstance.

He is buried in Trinity churchyard.



OSMER, GEORGE (born in Farmington, Connecticut, August 30, 1781; died in Chicago, Illinois, March 6, 1861), was a son of Doctor Timothy Hosmer, one of the earliest settlers of Ontario county, New York, and first judge of that county.<sup>1</sup>

He engaged in the practice of law at Canandaigua, New York, after completing a collegiate education. From there he soon removed to Avon, New York. He took part in the war of 1812, became district-attorney of Livingston county in 1820, served in the legislature from 1823 to 1825, and afterward returned to his successful practice at the bar.



OWARD, NATHAN, Junior (died in New York City in October, 1876), was a well-known legal author. He edited "Howard's Practice Reports," which for thirty years received general recognition as a standard authority in New York state.



UBBELL, LEVI (born in Ballston, New York, April 15, 1808; died in Milwaukee, Wisconsin, December 8, 1876), was graduated from Union College in 1827 and began his legal career in this state, becoming adjutant-general (1833 to 1836) and member of the assembly (1841). After his removal to Wisconsin, in 1844, he was active in the democratic party there. He was a judge of the 2d judicial circuit and for a year was chief-justice of the Supreme Court. He was tried on impeachment charges, but was acquitted. He resigned as judge in 1856 and resumed his law practice. From 1871 to 1875 he was United States district-attorney at Milwaukee.

<sup>1</sup> Doctor Timothy Hosmer was a brother of Titus Hosmer, a prominent public man of Connecticut and judge of the Maritime Court of Appeals of the United States. He was also an uncle of Stephen Titus Hos-

mer, chief-justice of Connecticut from 1815 to 1833. The family had for its American ancestor colonel Thomas Titus, an officer in Cromwell's army, who came to Boston after the accession of Charles II.



UMPHREY, JAMES (born in Fairfield, Connecticut, October 9, 1811; died in Brooklyn, New York, June 17, 1866), was graduated at Amherst College in 1831 and went to Louisville, Kentucky, to enter upon the practice of the law. Removing to New York and continuing his legal practice he became corporation counsel of Brooklyn in 1850-51 and republican representative in congress from 1859 to 1861, being re-elected to that body in 1864.

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HUNT, WARD (born in Utica, New York, June 14, 1810; died at Washington, District of Columbia, March 25, 1886), was the son of Montgomery Hunt, a conspicuous citizen and financier of Oneida county. He was educated at the local academy of Utica and at Union College, which he entered in his nineteenth year, graduating with honors. After leaving college he attended the famous law school of Judge Gould at Litchfield, Connecticut, taking the regular course, and later continued his legal studies in the office of Hiram Denio at Utica until his admission to the bar in 1831. He immediately commenced practice at Utica, and, through his father's connection with the Bank of Utica and his large circle of friends, he soon secured a considerable business. His professional career was further assured by his admission as junior partner into the law firm of Mr. Denio, which gave him a more than a respectable rank at the county bar, at the time distinguished for its eminent counsel. His duties in his early practice combined both those of attorney and advocate, with occasional opportunity to assist as counsel. His association with his senior, Mr. Denio, in the preparation of his briefs, fortifying them with citations and references, was of incalculable advantage. Thus rapidly maturing, Mr. Hunt at an early age in his practice acquired a reputation excelled only by the oldest lawyers in the county. He was engaged in the most important suits tried before the Supreme Court and the bench of Appeals at Albany.

He never took any active interest in politics. His earliest associations were with the democratic party, and in 1839 he served a single term in the legislature. Upon the formation of the republican party he became an adherent of that organization. In 1865 he was elected judge of the Court of Appeals by a large majority as the successor of his early instructor and long-time associate in practice, Judge Denio. Two years later he was promoted to the office of chief-judge of that court.

In 1872, Honorable Samuel Nelson having resigned his place as associate-justice, a vacancy occurred on the Supreme Bench of the United States. President Grant tendered the place to Chief-Judge Hunt. He took his seat January 7, 1873, and for six years bore a part in the proceedings of the supreme tribunal of the country. His circuit court allotments during the time were to the 2d circuit, including

New York, Connecticut, and Vermont. Early in January, 1879, Justice Hunt was stricken with paralysis of the right side and for a few days his life was despaired of. He slowly regained his health, but not sufficiently to resume his judicial labors. In 1882 congress authorized his retirement on a pension. The remainder of his years was spent in retirement.

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HUNT, WASHINGTON (born in Windham, New York, August 5, 1811; died in New York City, February 2, 1867), was educated in the common schools, and at the early age of eighteen engaged in the study of the law, being admitted to the bar in 1834, and beginning in that year the practice of his profession in Lockport. He speedily enjoyed success, and rose to political prominence. After serving as judge of Niagara county he was sent to congress as a whig, serving from 1843 to 1849. In 1850 he was elected governor over Horatio Seymour, but in 1852, being a candidate for re-election, was defeated. He became a democrat after the disorganization of the whig party. In 1860 he declined to accept a nomination for vice-president on the democratic ticket. He was a prominent "war democrat." He was an active and earnest lay member of the protestant episcopal church.

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HUTCHINS, WALDO (born in Brooklyn, Windham county, Connecticut, September 30, 1822; died in New York City, February 8, 1891), was of Connecticut ancestry, his mother's maiden name being Howard. Both his father, Waldo Hutchins, Senior, and his grandfather were physicians. Mr. Hutchins was graduated from Amherst College in 1842, and coming to New York City studied law with the firm of John Slosson and Augustus Schell, in 1845 being admitted to the bar. In 1852 he became a member of the firm and so continued until his death, the firm style changing, successively, from Schell, Slosson & Hutchins to Slosson, Hutchins & Platt and Hutchins & Platt.

Mr. Hutchins was prominently active in public life. In 1852 he was a member of the assembly from Kings county, at the age of twenty-nine becoming chairman of the judiciary committee of that body. Nominated a justice of the Supreme Court in 1856, he declined. He was one of thirty-two delegates-at-large to the constitutional convention of 1867. He was a member of the 46th, 47th and 48th congresses. He introduced in Congress a bill proposing as an amendment to the constitution the requirement of a vote of two-thirds of all members of each house in order to pass a bill over the president's veto. But his most signal public services were undoubtedly in connection with the parks and fire department of New York City. Under the act of 1853 for the erection of Central Park he was appointed a commissioner, and



held this unremunerative office for twelve years. "His admirable administration of this trust was a fortunate thing for this city. It was largely due to his vigorous policy, determination and high personal character that the prevailing corruption of that epoch did not touch the park." More recently he was active in connection with the "new parks" in the annexed district, north of the Harlem river, presided over the first public meeting on this subject, and was appointed by Mayor Edson a member of the commission to lay out the new parks. Appointed a member of the board of park commissioners of New York City in June, 1887, he held this position until his death, being chosen president of the board in June, 1889. Mr. Hutchins also participated prominently in the agitation resulting in the act of March, 1865, creating a metropolitan fire district and giving to New York City the first paid fire service in its history. Moreover, one of his most important and interesting law cases was as counsel in maintaining the constitutionality of the act creating this notable reform.

As a lawyer Mr. Hutchins enjoyed a large corporation practice and was counsel in many cases of note.



INGLIS, WILLIAM (born, probably, in New York City; died in Hoboken, New Jersey, about 1863), was, it is supposed, of Scotch ancestry. He was graduated from Columbia College in 1821, and was admitted to the bar in 1826. For thirteen years, until his elevation to the bench, he practiced law in New York City, holding a very respectable position in the profession, although he did not become especially distinguished. He took an active part in whig politics at the time of the United States bank excitement, and it was probably due to that circumstance that he was appointed to the bench of the Common Pleas Court upon the creation of a new judgeship in 1839. He was a highly popular trial judge, and when his term expired at the end of five years, the bar, without distinction of party, favored his reappointment. Governor Bouck, however, was resolved to appoint none but a democrat, and accordingly selected Charles P. Daly for the place. Mr. Daly at first declined, but later accepted at the personal request of Judge Inglis.



INGRAHAM, DANIEL P. (born in New York City in 1800; died there, December 12, 1881), was of Dutch and English descent his ancestors on his father's side having been engaged for many years in business, and those on his mother's side having been prominent in public affairs. When he was twelve years of age his family removed to Harlem, where they possessed considerable real estate inherited from his paternal grandfather, and where he resided until within a few years of his death. He was educated at Columbia

College, graduating at an early age, and read law with Richard Riker, who for twenty years was recorder of the City of New York. His fellow-student in the office was Thomas Brady, one of whose sons subsequently sat with him on the bench as an associate-judge in the Court of Common Pleas and in the Supreme Court. Upon coming of age he was admitted to the bar and at once commenced practice, winning early in his professional career the respect and confidence of all with whom he came in contact and acquiring a large and lucrative practice. Steadily growing in prominence, he in 1835 represented in the board of assistant alderman the 12th ward, which then embraced a large part of the territory of New York island, and he was alderman of of the same ward during the years 1836 and 1837.

His judicial life began in 1838, when Governor Marcy appointed him associate-judge of the Court of Common Pleas to fill the vacancy occasioned by the death of Honorable John T. Irving. In 1850, on the retirement of Judge Ulshoeffer, he was selected by his associates for the position of first judge, an office which he continued to hold so long as he remained a member of the court. For seventeen of the twenty years of his judgeship in the Court of Common Pleas no regular reports of the opinions of that court were published, but the reports of Smith and Hilton covering the last three years attest the great labors performed by the Common Pleas judges.

In the fall of 1857 he was elected a justice of the Supreme Court, taking his position as a member of that court on the 1st of January, 1858. He continued in this position, much of the time acting as chief-justice, until 1874, when his term expired and he had passed the constitutional limit of judicial life. As a judge of the Supreme Court his opinions are reported in the last forty volumes of Barbour and seven volumes of Lansing, and in Abbott and Howard, as well as in the Court of Appeals reports for the year 1864, when he served as a member of that court.

Judge Ingraham, in his long career on the bench, possessed uniformly the highest confidence and respect of the profession and the public. His judicial abilities were of a very superior order, and to these he added great conscientiousness, dignity and courtesy.



IRVING, JOHN TREAT (born in New York City, May 26, 1778; died there, March 15, 1838), was an elder brother of Washington Irving, the eminent man of letters. He was graduated from Columbia College in 1798, and took up the study of the law. Being admitted to the bar, his natural ability and his great industry soon won for him an important place in the profession. In 1816 and 1817 he was a member of the assembly of the state, and in 1821 he was appointed to the bench of the Court of Common Pleas, being the first judge of that newly-organized tribunal.

He served as Common Pleas judge until his death—seventeen years. He was a trustee of Columbia College and a vestryman of Trinity Church. He possessed literary ability, and in his earlier years contributed to the columns of the *Chronicle*, edited by his brother, but in later life the claims of his profession and his official duties engaged his exclusive attention.

Honorable Charles P. Daly, in his introduction to the first of E. D. Smith's Reports, says of Judge Irving:

As a judge he was in many respects a model for imitation. To the strictest integrity and a strong love of justice he united the most exact and methodical habits of business. Attentive, careful and painstaking, few judges in this state ever have



SUNNYSIDE, WASHINGTON IRVING'S RESIDENCE.

been more accurate, or perhaps more generally correct in their decisions. While presiding at *nisi prius* he was not what would be termed a quick-minded man, but when questions were argued before him *in banc* he bestowed so much care and considered each case so attentively that his judgments were rarely reversed, and were uniformly treated by the courts of revision with the greatest respect.

Upon his death the bar caused a handsome marble tablet, with his bust in *relievo*, to be placed in the court-room, with the following inscription:

VIRO · HONORATO  
IOANNI · T · IRVING  
QVEM · JVDICIS · OFFICIO · MVLTOS · PER · ANNOS · FVNCENTEN ·  
ET · LEQV · DOCTRINA · ET · MORV · INTEGRITAS · FELICISSEME · CONDECORABANT ·  
IVRISCONSVLTI · NEO-EBORACENSES · QVIBVS · ET · AMICI · ET · MAGISTRI  
TAM · TRISTE · RELQVIT · DESIDERIVM  
H · M · PONENDVM · CVRAVERVNT



AMES, AMAZIAH B. (born in Rensselaer county, New York, in 1812; died in Troy, New York, in July, 1883), received an academic education and was admitted to the New York bar in 1838. He practiced law for fifteen years in Ogdensburgh. He was elected a judge of the Supreme Court and remained on the bench twenty-three years, winning distinction for

courtesy, fairness, learning, and integrity. He resigned the judgeship in 1876 to accept an election to congress. He declined a re-election and retired to private life.

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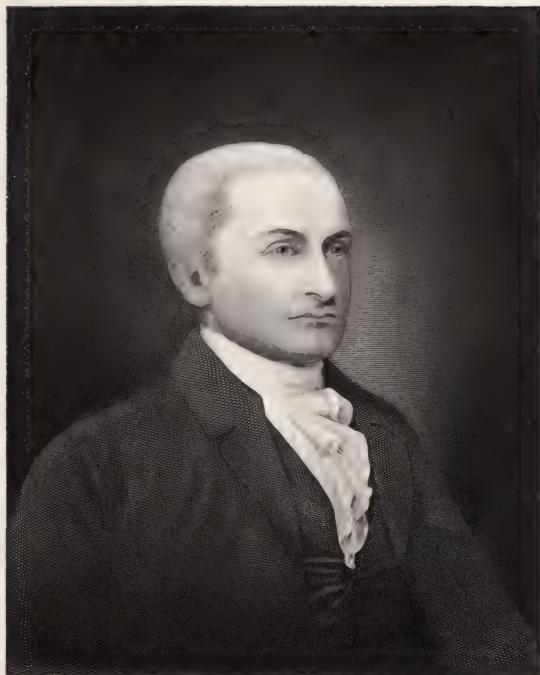
JAMISON, DAVID, was one of the early colonial practitioners, living in New York City. So far as is known, he was a man of character and capacity, although Governor Bellomont declared that he had been condemned to be hanged in Scotland for blasphemy and burning a bible. In 1707 he was one of the counsel of Mackamie, or Makamie, a presbyterian clergyman, prosecuted by Cornbury for preaching without a license at a private house in Newtown on his way from New York to Virginia. Mackamie was held for two months in prison. The legal question at issue was whether the English act of uniformity operated in the colonies. Jamison was chief-justice of New Jersey from 1710 to 1719, although still maintaining his residence in New York.

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JAY, JOHN, first chief-justice of the state of New York and first chief-justice of the United States (born in New York City, December 12, 1745; died in Bedford, Westchester county, New York, May 17, 1829), was descended from Huguenot ancestors. After his graduation at King's College (now Columbia) in 1766, he was, in the same year, admitted to the bar. His legal preceptor was Benjamin Kissam. He began practice at the age of twenty-one, and in ten years established a reputation for ability which was the foundation of a career of uninterrupted distinction. He was one of the foremost men of New York in the manifestations which preceded the American Revolution. He participated in the formal organizations of the patriotic citizens of New York, and the authorship of the recommendation of a committee of New Yorkers, that "a congress of deputies from all the colonies in general" be held, is ascribed to him. He was a delegate to the early general congresses at Philadelphia, and one of the leading members of those bodies, being the author of the "Address to the People of Great Britain" (which Jefferson praised in the highest terms) and of the "Address to the People of Canada and of Ireland"; and he was one of the secret committee appointed by congress in November, 1775, "to correspond with the friends of America in Great Britain, Ireland, and other parts of the world." During his attendance at Philadelphia he had been chosen a delegate to the New York provincial convention, and at the request of that body (then in session at White Plains) he went to participate in its deliberations. It was on his motion that the declaration of independence was unanimously approved by the New York convention, and he was very conspicuous in its subsequent transactions, being the





John Jay —



chief author of the state constitution which it adopted (April 20, 1777). Early in May, 1777, the state government agreed upon was organized and established, and Mr. Jay was chosen chief-justice, his competitor being General Scott. He held his first term as chief-justice of the state on September 9 following, at Kingston. He also, at this time, served as a member of the council of safety, which, under its authority to direct the military occupation of the state, exercised arbitrary powers.

The duties of Jay in the chief-justiceship of the Supreme Court of New York were soon interrupted by the demands of his country's service. Being sent to congress in the special emergency occasioned by the erection of the State of Vermont as a commonwealth distinct from the State of New York, he was chosen president of that body (December 1, 1779). He continued in that capacity for nearly a year, when, September 27, 1779, he was appointed minister to Spain. In this office he remained until after the conclusion of peace. He served with John Adams and Benjamin Franklin as one of the peace commissioners of the United States, being appointed at Franklin's request by congress, June 23, 1782. His contributions to the diplomacy of the peace commissioners were of the greatest value; from the beginning he intelligently and firmly resisted all the secret endeavors of the French government to limit the territorial bounds of the nation at the west, and the most advantageous terms of the resulting treaty were in a peculiar manner his personal triumph.

AUTOGRAPHS OF AMERICAN PEACE  
COMMISSIONERS.

In July, 1784, he returned to the United States to assume the duties of secretary of foreign affairs, the chief executive position then existing, to which he had been appointed by congress—an office which he retained until the end of the provisional régime. It was largely by his influence that the State of New York was persuaded to give its assent to the federal constitution.

When the national government was organized under President Washington, Jay was requested by the president to choose for himself the position most acceptable to him. He thereupon selected the office of chief-justice of the Supreme Court. In accepting the chief-justiceship he resigned the honorable place of president of the abolition society, which he had previously held. As chief-justice of the United States, he was the incarnation of honor and dignity. In the familiar words of Daniel Webster, "When the spotless ermine of the judicial robe fell on John Jay, it touched nothing less spotless than itself." But he was not permitted to remain in the placid enjoyment of his great judicial station. In 1792 he was a candidate for governor of

New York against George Clinton, but he was defeated by the throwing out of votes on technical grounds. In 1794 he was sent by Washington as a special envoy to England, and the result of this mission was the negotiation of the celebrated "Jay's Treaty." Upon his return to the United States he assumed the office of governor of New York, to which he had been chosen in his absence, and he was re-elected in 1798. Retiring from the governorship in 1801, he was reappointed chief-justice by President John Adams, but he declined that honor and retired to private citizenship.

There can be no doubt of the greatness of Jay as a judge. The case of *Chis olm vs. Georgia*, in 2 Dallas, 415, is a signal illustration. It involved the question whether a state could be sued. Jay's opinion in this case made the Supreme Court the final interpreter of the constitution. It originated the logic and the methods of reason which

Marshall employed afterward in upholding federal authority. Touching this decision, Judge Cooley has said:

After this clear and authoritative declaration of national supremacy the power of a court to summon a state before it, at the suit of an individual, might be taken



GOLD SNUFF-BOX OF JOHN JAY.

away by the amendment of the constitution—as was in fact done—without impairing the general symmetry of the federal structure, or inflicting upon it irremediable injury. The union could scarcely have had a valuable existence had it been judicially determined that powers of sovereignty were exclusively in the states or in the people of the states severally. The doctrine of an indissoluble union, though not in terms declared, is nevertheless, in its elements at least, contained in the decision. . . . It must logically follow that a nation, as a sovereignty, is possessed of all those powers of independent action and self-protection which the successors of Jay subsequently demonstrated were by implication conferred upon it.

In a charge to a grand jury at Richmond, in 1783, Jay took the ground that violations of the neutrality proclamations of the federal executive were indictable at common law; that international law is a part of the common law binding upon the states. In this position he has been since sustained by the decisions of the Supreme Court. Story had a very high opinion of Jay as a lawyer, and once wrote that he was "equally distinguished as a revolutionary statesman and a general jurist."



**J**AY, JOHN (born in New York City, June 23, 1817), is a son of Judge William Jay (q. v.). He was graduated from Columbia College in 1836 and admitted to the bar in 1839.

Inheriting the anti slavery creed of his father and grandfather, he devoted himself energetically to this reform movement. In his profession he made himself conspicuous by his advocacy of the cause of fugitive slaves, appearing as counsel in behalf of the Lemmon slaves, Henry Long, George Kirk, and two Brazilian slaves who were landed in New York. He waged a prolonged contest—which was finally successful—to procure the admission of Saint Philip's colored church to the protestant episcopal convention. He took part in the original organization of the republican party in the State of New York. He was appointed minister to Austria in 1869 and served until 1875, when he resigned. He was president of the Union League Club in 1866 and 1877, state commissioner for Antietam cemetery in 1868, chairman of the commission to investigate the New York custom house in 1877, a member of the state civil service commission (by the appointment of Governor Cleveland) from 1883, first president of the Huguenot Society (organized in 1855), and has been prominently connected with the New York Historical Society. He is the author of numerous addresses and pamphlets.



*John Jay*

**J**AY, PETER AUGUSTUS (born in Elizabethtown, New Jersey, January 24, 1776; died in New York City, February 20, 1843), the eldest son of John Jay, the elder, was graduated from Columbia College in 1794. He accompanied his father, as his secretary, on his mission to England in that year, and after his return engaged in legal studies and was admitted to the New York bar. He gained distinction as a lawyer and also was a man of mark in political and legislative affairs. He gave valuable assistance in promoting the construction of the Erie canal, and was prominent with his brother William in the movement for abolishing slavery in this state. He was recorder of New York City from 1819 to 1821, a delegate to the constitutional convention of 1821, a trustee of Columbia College, president of the New York Historical Society, and a cordial friend of charitable enterprises. He was a member of the Kent club, in which

some of the leading lawyers of the city were affiliated, was a man of large general as well as juristic learning, and possessed a character of high moral purity.




JAY, WILLIAM (born in New York City, June 16, 1789; died in Bedford, New York, October 14, 1858), was the second son of John Jay the elder. He was privately instructed in the classics by an English scholar, and later attended Yale College, graduating in 1808. He studied for the law at Albany under John B. Henry, but in consequence of an affection of the eyes did not long pursue the profession. He acquired, however, an excellent legal equipment, which fitted him for the long-continued and excellent services which he afterward rendered on the bench. He was appointed in 1818 by Governor De Witt Clinton judge of Westchester county, and although that office was vacated for a time after the constitution of 1821 came into effect, he was later reappointed and continued to occupy it until 1843, when he was removed by Governor Bouck because—as was alleged—of his decided anti-slavery principles.


He early took a keen interest in the slavery question, and throughout his life was very conspicuous as a writer and speaker in behalf of the anti-slavery cause. He did not, however, take extremist views on the constitutional issues involved, and while maintaining that congress had authority to suppress the domestic slave trade and to abolish slavery in the territories under its exclusive jurisdiction, he did not agree with those who wished it to interfere with this institution in the states.

*William Jay*


He rendered able assistance in the advocacy of free speech, and while on the bench delivered a notable charge to the grand jury, advising them that any law passed to abridge in the least the freedom of speech or the liberty of the press was necessarily null and void. He discussed with great ability certain legal principles involved in phases of the slavery discussion—notably the doctrine announced by a Connecticut court in the Prudence Crandall case, that persons of color could not be citizens. His writings on slavery were voluminous, widely circulated, and did much to mould public opinion. He also was ardently devoted to the cause of international arbitration as a substitute for war being one of the pioneers in that cause. He was president of the American Peace Society, attended peace congresses abroad, and wrote a number of notable pamphlets on the subject. He published in 1833 a work entitled "The Life and Writings of John Jay," which for the first time disclosed the actual services of that statesman in the peace negotiations of 1782-83. He was appointed in 1833 by President Jackson a commissioner to adjust all unsettled matters with the western Indians, but declined. He was an intimate friend from boyhood of James Fenimore Cooper.

 ENKS, GRENVILLE T. (born in Boston in 1839; died in Saratoga, New York, August 14, 1870), was a nephew of Wendell Phillips. He was graduated from the University of New York and entered the law office of Lott, Murphy & Vanderberg. Being admitted to the bar, he became a member of the firm of Pierson, Hyde & Jenks, and upon its dissolution organized the firm of Jenks & Ward. He was a highly effective jury advocate, and his early death was greatly deplored. He lived in Brooklyn.

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 EWETT, FREEBORN G. (born in Connecticut in 1791; died in New York in 1858), was the first chief-judge of the Court of Appeals chosen under the constitution of 1846. He had a common school education, and after his admission to the bar was prominent in politics and in law. He was inspector of state prisons, county judge, circuit judge, a member of the assembly and member of congress. He resigned from the Court of Appeals in 1853. The opinions he delivered while on the bench show him to have been a judge of the clearest intellect, and his opinions construing the code of civil procedure are especially lucid and are constantly cited as precedents in other code states.

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 OHNSON, ALEXANDER S. (born in Utica, July 30, 1817; died in Nassau, Bahama islands, January 26, 1878), went through a course of study at Yale College, and was admitted to the bar when twenty-one years old. He practiced in Utica and New York City. He was elected justice of the Supreme Court at the first election under the constitution of 1846. In 1851 he was elected to the Court of Appeals. This position he held for nine years. In 1860 he returned to Utica and resumed the practice of the law. President Lincoln, in July, 1864, appointed him United States commissioner for the settlement, under the treaty with Great Britain, of the Hudson Bay and Puget Sound companies' claims. The duties of this office employed him for about three years. In January, 1873, he was appointed to the bench of the Commission of Appeals, and in December of the same year he was promoted to the Court of Appeals. Subsequently he was appointed commissioner to revise the statutes of New York, which position he resigned to accept the appointment of United States circuit judge for the 2d judicial district. He was a regent of the New York University. His rank as a jurist is high. His opinions are marked by great research and original learning.



JOHNSON, THOMAS A. (died at Corning, New York, December 5, 1872), had at the time of his death been in continuous service for twenty-five years as a Supreme Court justice. He was elected to the supreme bench of the 7th judicial district in 1847, and re-elected at each successive expiration of his term. In 1864 he sat as a member of the Court of Appeals. Shortly before his death, in 1870, he was appointed by Governor Hoffman one of the general term justices for the 4th department.

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JOHNSON, WILLIAM (born in Middletown, Connecticut, about 1770; died in New York City in July, 1848), was graduated at Yale College in 1788, and after admission to the bar engaged in legal practice. As the compiler of "Johnson's Reports," his name and work are familiar to every New York lawyer. He published "New York Supreme Court Reports, 1799-1803," "New York Chancery Reports, 1814-23," "Digest of Cases in the Supreme Court of New York," and also a translation of D. A. Azuni's "*Sistema Universale dei principii del diritto maritimo dell' Europa*." He was Supreme Court reporter from 1806 to 1823, and reported for the Court of Chancery from 1814 to 1823. It is the unanimous testimony of his legal contemporaries that he was a man of very excellent attainments and high character. The "Commentaries" of Chancellor Kent are dedicated to him. According to William A. Duer, he was "a man of pure and elevated character, an able lawyer, a classical scholar, a gentleman and a Christian." And Judge Story has paid him this handsome compliment: "No lawyer can ever express a better wish for his country's jurisprudence than that it may possess such a chancellor [Kent] and such a reporter [Johnson.]"

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JONES, DAVID (born in Fort Neck, Long Island, September 16, 1699; died there, October 11, 1775), was a son of Thomas Jones, one of the early settlers of Long Island.<sup>1</sup> He enjoyed educational advantages exceptional for those times, and chose the profession of the law. He pursued this calling in the City of New York, being one of the leading members of the bar of the period. In 1734 he received the appointment of judge of Queens county, and he was a judge of the colonial Supreme Court for fifteen years from 1758. Previously to his elevation to the Supreme Court bench he had been speaker of the assembly thirteen years.

<sup>1</sup> Thomas Jones, the father of David, came from a Welsh family. He was a partisan of James II. in the English dynastic revolution, fought in the battle of the Boyne, fled to France, and from there sailed in 1692 under a letter of marque. In the same year he came to Long Island, and, marrying Freelove Townsend,

daughter of Thomas Townsend, acquired by that union and by purchases from the Indians a very large landed estate. He was captain of the Queens county militia, high sheriff of the county, major of the Queens county regiment, and "ranger-general of the island of Nassau," as Long Island was then called.



The circumstances of the appointment of David Jones to the Supreme Court bench are of much local historic interest. The court at that time consisted of a chief justice, De Lancey, and two puisne judges, Chambers and Horsmanden. A case arose in which the title to lands claimed by Trinity church was involved, and as both Chambers and Horsmanden were trustees or vestrymen of Trinity, Chief-Justice De Lancey having temporarily suspended his judicial functions to perform the duties of acting-governor, it became necessary to appoint a third puisne judge. Jones was selected, and in November, 1769, he tried the case of *Brower vs. Trinity Church*, the first of the famous contests by the Anneke Jans heirs. Judge Jones, though of the episcopalian denomination, gave the suit a careful and impartial trial. He resigned in the fall of 1773, owing to the infirmities of age. Throughout his life he was attached to the episcopalian or high tory party.



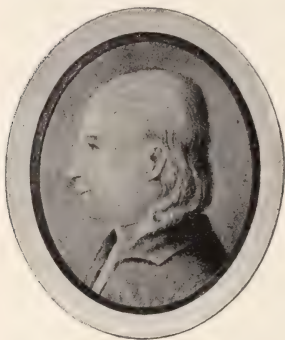
ONES, DAVID S. (born in Westneck, Long Island, November 3, 1777; died in New York City, May 10, 1848), a son of Samuel Jones the elder (q. v.), was graduated in 1796 at Columbia College with the first honors, and soon after was appointed by Governor John Jay as his private secretary. For a number of years he was first judge of Queens county. He was three times married, becoming allied successively to the Livingston, Le Roy and Clinton families. Removing from his Long Island estate, at Massespaqua, to New York City, he took his place in the front rank of the profession, and remained until his death one of its most conspicuous lawyers, being also an active citizen. He was prominently identified with the interests of some of New York's leading institutions—Columbia College, the Society Library, the General Theological Seminary, and others.



ONES, SAMUEL (born July 26, 1734; died in Westneck, Long Island, November 21, 1819), was a grandson of the first Thomas Jones (see David Jones, footnote), a nephew of Judge Thomas Jones (q. v.) and a son of William Jones, a respectable lawyer of the early colonial bar. His legal preceptor was the New York chief-justice and historian, William Smith the younger. Although attached to the crown sympathetically during the Revolution, and remaining inside the British lines, he was not a participant in the war, and upon the establishment of peace he accepted the new order of things, becoming one of the foremost of New York lawyers and jurists and a prominent and valuable man in public life.

He served in the assembly from 1786 to 1790, and in the state senate from 1791 to 1799, and he was conspicuous in the national constitutional convention, taking in that body a decided federalist

attitude. His name is especially memorable in the annals of the New York bar because of his connection with the first revision of the statutes of the state. He was appointed with Richard Varick in 1789 to perform this important duty, and the resulting revision was



*Samuel Jones*

mainly his work. For eight years from 1789 he occupied the office of recorder of New York City, and from 1796 to 1799 he was comptroller of the state, not only being the first to hold that position, but having prepared the act under which the comptroller's office was organized. He was succeeded as comptroller by James Kent (afterward chancellor), who has left a very high tribute to Mr. Jones' attainments. "No one," says Chancellor Kent, "surpassed him in clearness of intellect and in moderation and simplicity of character; no one equalled him in his accurate knowledge of the technical rules and doctrines of real property, and his familiarity with the skillful and elaborate,

but now obsolete and mysterious, black-letter learning of the common law." According to Doctor David Hosack, "common consent has assigned him the highest attainments in jurisprudence, and the appellation of father of the New York bar."



ONES, SAMUEL (born May 26, 1769; died in Cold Spring, New York, August 9, 1853), the second son of the preceding, was graduated at Columbia College in 1790. He obtained his legal education in the office of his father, where De Witt Clinton was at the same time a law student. As a practitioner and jurist he was scarcely less eminent than the senior Samuel Jones. He held the offices of assemblyman (1812-14), recorder of the City of New York (1823), chancellor (1826-28), chief-justice of the Superior Court of the City of New York (1828-47) and justice of the Supreme Court of the state (1847-49). He lived to the advanced age of eighty-six, and although he had completed his eightieth year upon his retirement as a Supreme Court justice, he returned to the practice of his profession and continued therein until two months before his death.

*S. Jones Jun*



ONES, SAMUEL (born in February, 1825; died in Poughkeepsie, New York, August 11, 1892), a son of the preceding, was graduated at Columbia College in 1845, and immediately afterward commenced the study of law in the office of Daniel Lord. He was admitted to the bar in 1847, and entered upon legal practice in New York City. He was one of the first members of the Association of the Bar, and for six years was a judge of the New York City Superior Court (1866-72). Afterward he accepted an appointment as reporter of that court, and with ex-Judge James C. Spencer edited twenty-seven volumes of reports.



ONES, SAMUEL WILLIAM (born in Cold Spring, New York, July 6, 1791; died in New York City, December 1, 1855), a grandson of the elder Samuel Jones, was graduated at Union College in 1810, and was a law student in the office of his uncle, Samuel, the younger. Engaging in professional business in Schenectady, New York, he became mayor of that city and afterward surrogate and first judge of the county.



ONES, THOMAS (born in Fort Neck, Long Island, April 30, 1731; died in Hoddestown, Hertfordshire, England, July 25, 1792), was a son of David Jones (q. v.). He received a collegiate education, being graduated from Yale in 1750, and in 1755 was licensed to practice law in New York City, soon rising to prominence. In the course of his professional career at the city bar he was the attorney many years for the governors of King's College (now Columbia), and he also was attorney for the corporation. He became clerk of the Queen's county Court of Common Pleas in 1757, and from 1769 to 1773 was recorder of the City of New York, succeeding in that office Simon Johnson, who had held it for twenty-two years. He retired from the recordership to take the seat of his father on the bench of the colonial Supreme Court (October, 1773). He was one of the last crown judges, holding at White Plains in April, 1776, the last court under the British régime, although he retained his office until the end of the war.

*Thomas Jones*

His personal sympathies, family connections and other associations all caused him to espouse the loyalist side during the Revolution. He was allied to the aristocratic De Lancey family, having married Anne, a daughter of the chief-justice. He maintained two handsome residences, one facing the Great South bay, built for him by his father and the other, named "Mount Pitt," erected by himself on his wife's property between the Bowery and the East river. In June, 1776, he was summoned by a committee of the New York provincial congress

to appear and show why he "should be considered a friend of the American cause," and, refusing to obey, was placed under arrest, taken to New York City, and there released on giving his parole to appear at the command of congress. Subsequently, on the ground that the parole was null, he was removed to Connecticut, but was discharged on a second parole. Again he was arrested, notwithstanding his parole, and sent to Connecticut, where he was exchanged for General Selleck Silliman, his old personal friend. This was in 1780. The next year, in March, he sailed for England. He spent the rest of his life there, being attainted of treason in New York, and his estates being confiscated; but his Great South bay property, with its historic house, has ever since remained in the family of his daughter, Arabella, who married Richard Floyd.

Judge Jones wrote a "History of New York during the Revolutionary War," from the loyalist standpoint, which, edited by his descendant, Edward Floyd De Lancey, was reprinted for the New York Historical Society in 1879.



JORDAN, AMBROSE LATTING (born in Hillsdale, Columbia county, New York, May 5, 1789; died in New York City, July 16, 1865), spent his early boyhood on a farm, and was self-educated. At the age of eighteen he entered a law office in Albany, and in 1812 he was admitted to the bar. He commenced practice at Cooperstown, New York, and became district-attorney and surrogate of Oswego county. In 1820 he removed to Hudson, and the next year he was made recorder of that place and presiding-judge of the Mayor's Court. He gained much reputation in 1826 by his successful prosecution of a student of Kinderhook Academy for the murder of a farmer's son in a street brawl, the lawyers opposed to him being Thomas J. Oakley, Benjamin F. Butler and Campbell Bushnell. For twelve years more he continued to practice at Hudson, being one of the best known attorneys at the Columbia, Ulster, Greene, Dutchess and Westchester circuits. In 1838 he won for his client the first breach-of-promise suit in which a lady was the defendant. Henry R. Storrs was the opposing counsel in this case. Soon afterward he went to New York City, where he spent the remainder of his active life in very successful practice.

Mr. Jordan in the early part of his professional career took some interest in politics. He represented Columbia county in the assembly in 1825, and he was a member of the senate from 1826 to 1829. The senate at that period constituted the Court of Errors, and was the court of last resort. Mr. Jordan's opinions as one of its judges are recorded in 8 Cowen, 589, 623. He was a delegate to the constitutional convention of 1846 and attorney-general of the state in 1847, being the first to hold that office by popular election.





KENT, JAMES (born in Philippi, Putnam county, New York, July 31, 1763; died in New York City, December 12, 1847), ranks probably as the very first of American jurists. There is some discrepancy among his biographers concerning the events of his youth. His birthplace has been said to have been in Dutchess county, at Frederickton, now Kent, but according to the best authority he was born in Putnam county, at Philippi. His grandfather, Elisha Kent, was the son of a farmer in Connecticut, was graduated at Yale in 1728, married a daughter of the Reverend Doctor Moss, of Connecticut, preached some time at Newtown, and then became the pastor of the presbyterian church at Philippi (1740), dying there in 1776. His parish was known as Kent's parish. Moss Kent, his oldest son, was graduated from Yale in 1752, and was admitted in 1756 to the bar of Dutchess county. He became surrogate of Rensselaer county, and died in 1794.

James Kent was sent at the age of five to a school in Norwalk, Connecticut, and afterward attended a Latin school in Danbury, Connecticut, where he prepared for Yale. He entered Yale in 1777 and was graduated in 1781. In his diary he records his opinion of the weakness of Yale's curriculum at that time. While at Yale he was one of the founders of the Phi Beta Kappa Society.

Before his graduation he by accident one day picked up a copy of Blackstone's Commentaries, and he has recorded how it impressed him: "When the college was broken up and dispersed in July, 1779, by the British, I retired to a country village, and finding Blackstone's Commentaries I read the four volumes. Part of the work struck my taste, and the work inspired me at the age of fifteen with awe, and I fondly determined to be a lawyer." In November, 1781, he began the study of law with the celebrated Egbert Benson, the first attorney-general of the state, and afterward one of the judges of the Supreme Court. At this time Benson was the acknowledged leader of the New York bar. Kent continued in his office at Poughkeepsie until he had fully grounded himself in the principles of the profession. His range of reading during his student life was large. Besides law he read works of general literature and took up French, of which he later became a master. He also continued to cultivate his Greek and Latin. In 1785 he was licensed as an attorney, and in 1787 he was admitted to the bar as counsellor at Albany. He married in 1785 Elizabeth Bailey, the sister of Theodoros Bailey, who was subsequently United States senator. Immediately after his admission he opened an office at Catron, New York, which has since become a part of the State of Con-



JAMES KENT AS A YOUTH.

necticut. In that village he failed to obtain a single piece of legal work to do. In the diary of his life he has left an amusing account of why he left Catron. He was waited on by a committee of the town, who informed him that the people regarded lawyers as destructive of the peace and order of the people, and hence had been deputed to call on him and ask him to remove from the town. Mr. Kent informed the committee that he would go at once, and in about a month thereafter he undertook practice in Frederickton, Dutchess county. He remained there but a few months, when he was induced by friends to go to Poughkeepsie. Soon after his removal to Poughkeepsie he entered into an association with Gilbert Livingston. The articles of copartnership provided for a term of twelve years. The firm immediately acquired a very good business.

After two years of practice at Poughkeepsie Mr. Kent was elected (1790) to represent Dutchess county in the state legislature, and in 1792 he was re-elected. He acted with the federalists. While he was a member of the legislature Aaron Burr was chosen by it a United States senator. Kent voted for Schuyler. In 1792 he took a very prominent part in the contest for the governorship between John Jay and George Clinton. He favored Jay, and wrote a very able argument in support of Jay's election when the matter of contest was referred by the legislature to the judgment of the two United States senators, King and Burr. In this argument he showed the fallacies in Burr's opinion to the effect that the disputed election was in favor of Clinton. But the attitude thus taken by Mr. Kent did not cause a rupture of his social relations with Burr. "I have dined and breakfasted with Mr. Burr," he wrote at this time, "and have received great attention and politeness from him. The insinuation of his manners is equal to the refinement of his taste and activity of his mind." While still in the legislature he ran for congress, but was defeated.

In 1793, after his term in the legislature had expired, he removed to New York City. During his first year's practice there Governor Jay, to whom Kent's federalist sympathies were a strong recommendation, appointed him a master in chancery for the city. The New York City bar of that era shone with a brilliancy rarely since equalled. Aaron Burr, Alexander Hamilton, Josiah Ogden Hoffman, Brockholst Livingston, Egbert Benson and James Duane were then in full practice. Kent had the advantage of having dealings with all these great lawyers while he was a master in chancery. His attention was called to the old writers on civil laws and their modern expounders in Europe by Alexander Hamilton. He read and studied such works as those of Pothier and Emerigon, and became familiar with the whole school of French commentators on the civil law. This rounded out his legal education and fitted him to lecture, and in the year 1793 he was appointed professor of law in Columbia College. He began his lectures in November, 1794. Of his first course he afterward wrote: "I read a

course in 1794-95 to about forty gentlemen of the first rank in the city. They were very well received, but I have long since discovered them to have been slight and trashy productions." In 1796 he was sent to the legislature from New York City. As to the position he occupied at Albany there is no authentic record. His qualities were judicial rather than executive or legislative. He probably had much of the character of a silent member. In 1797 he became recorder of the City of New York, but in less than a year he resigned to accept an appointment as judge of the Supreme Court. In 1804 he was made chief-justice.

The Supreme Court of New York as then constituted was a perfect copy of the English King's Bench. It was not in any sense a local or county court, but was a state court which sat *in banc* at New York City and Albany, and the judges rode the circuit of the counties and took verdicts. The court was a unity and consisted of a certain number of judges and a chief-justice, with jurisdiction extending all over the state. In Kent's time, at least when he went on the bench, Albany county comprised a vast part of the northern and western portion of the state. Most of the business of the Supreme Court was transacted at Albany, and in 1799 Judge Kent removed to that city. He served on the Supreme Court bench until 1814. His opinions from the supreme bench are reported in the "Reports" of George Caines and in the "Reports of Cases in the Supreme Court and Court of Errors of New York from 1806 to 1823," by William Johnson.



*Thomas Kent*

Kent's common-law opinions have been overlooked by the profession while associating him with equity jurisprudence. In them he originated many principles of law. Had it not been for his transcendent fame as a chancellor, which somewhat obscures his reputation as a common-law judge, his decisions while on the supreme bench would have made him famous. His first reported decision is found in 1 Johnson's Cases, 1. From the reading of this opinion one can see at a glance how perfectly prepared he was to assume the judicial ermine. It is a model of clear statement and logical reasoning. He adopted in it a style of writing which he pursued while on the bench, that of first stating just what the point or points to be decided was or were, and then proceeding to deal with each point from a legal standpoint. There is never any doubt in the mind of a lawyer just what Kent decided. The point

determined is stated with a clearness unrivalled by any other American judge. It is quite a coincidence that the case alluded to above (*Seton vs. Low*) should have been one involving questions of commercial law and the law of insurance, in which branch of jurisprudence Kent particularly shines in his "Commentaries." The opinion begins thus: "Two questions were raised on the argument in this case: 1. Whether the contraband goods were lawful, within the meaning of the policy. 2. If lawful, whether the assured were bound to disclose to the defendant the fact that part of the cargo was contraband of war." This method of delivering an opinion may reasonably be commended to the judges of the present day, who too often leave it in doubt precisely what point or points their opinions involve. In Kent's second reported case, that of *Ludlow vs. Dale* (Johnson's Cases, 16), there appeared before the court of which he was a member a great array of legal talent. Hoffman and Livingston represented the plaintiff and Harison and Alexander Hamilton the defendant. It was an insurance case. The point involved was whether the sentence of an admiralty court of a belligerent precludes all further inquiry respecting the neutrality of the property. He rendered a decision replete with learning, and cited a long list of English cases to justify his conclusion that the foreign judgment was final. In the case of *Jackson vs. Rogers* (1 Johnson's Cases, 33) we find him taking part *in banc* on a motion for a new trial in an ejectment suit. Spencer and Burr were among the counsel for the plaintiff, and Van Vechten for the defendant. Judge Kent gave his decision in favor of Burr's client. The case is important as containing a model exposition of exactly what constitutes a disseisin, and the distinction between a disseisin by election as contradistinguished from a disseisin in fact. In *Johnson vs. Bloodgood* (1 Johnson's Cases, 54) he lays down the doctrine that courts of law will take notice of assignments and trusts, and consider who are beneficially interested, and will protect the *cestuy que trust*. In *Betts vs. Turner* (1 Johnson's Cases, 70) he defines the rule for the construction of covenants and what constitutes a performance or a breach. With all the learning that has been expended on the subject of the performance and breach of covenants since Kent's time, nothing new has been developed in principle from that laid down by him in this last case. The opinion is a model of conciseness and brevity. In *Frost vs. Carter* (1 Johnson's Cases, 73) he construes an insolvent law and arrives at the conclusion that if an indorser pay a note after the maker has been discharged under the insolvent act, he may recover the amount from the maker, whose discharge will be no bar to the action. In *Jackson vs. McCrea* (1 Johnson's Cases, 114) he was called on to decide against his mentor and idol, Hamilton. The case involved the question as to what constitutes a delivery of a deed. In the *United States Bank vs. Haskins* (1 Johnson's Cases, 132) he decides a question of pleading against Aaron Burr. In *People vs. Olcott* (2 Johnson's Cases, 301) he delivers one of his most



striking and learned decisions. He holds that the court may, in its discretion, in a criminal case, discharge a jury who are unable to agree on a verdict, and against the consent of the defendant, who may be brought to trial a second time for the same offence. He reviews the entire law about extorting a verdict from an unwilling jury by means of starvation and darkness, and arrives at the conclusion "that the position, generally denying the power of the court to discharge a jury sworn and charged in a criminal case, has originated (probably without further examination or inquiry) from a dictum to be found in the institutes of Lord Coke, and that this dictum rests upon his single authority, without the sanction of any judicial decision."

The most important case that Kent decided while on the supreme bench was that of *People vs. Croswell* (3 Johnson's Cases, 337). There was a deal of political excitement connected with this suit. The defendant had been convicted of printing and publishing a scandalous libel upon Thomas Jefferson, president of the United States, and a motion was made to set aside the verdict because the trial judge erred in not allowing the defendant to prove the truth of the alleged libel and in not permitting the jury to pass on the question of intent of the defendant. In connection with Harison and Van Ness, two very eminent lawyers, Alexander Hamilton appeared for the prisoner, and this was one of the last cases he argued. The attorney-general, Spencer, appeared for the state. The whole question of libel was argued *in extenso*, Hamilton making one of the greatest efforts of his life. Kent subsequently said he had never read or listened to such an argument as that of Hamilton in this case. The court was divided on the question and the motion for a new trial was lost, but Croswell was never punished, as no motion was ever made for judgment. Kent delivered what is probably his very greatest opinion, either at law or in equity, reviewing the entire history of libel, and holding that the defendant was entitled to give in evidence upon the trial the truth of the libel. He drew principles and illustrations from the civil law and made a minute historical analysis of the English decisions, rejecting Lord Mansfield's famous conclusion that "the greater the truth, the greater the libel." In 1805 a "libel bill" was passed by the legislature which embodied the views contended for by Kent.

It is needless to examine in further detail the opinions delivered by Kent when a Supreme Court judge. The reports of Johnson and Caines are replete with his determinations upon all manner of questions. These determinations are the very fountain-head of common-law learning in America, and are daily referred to and cited in our courts.

In 1814 he was appointed chancellor of the state to succeed Lansing. Chancery law had been very unpopular during the colonial period, and had received down to his time but little development, no decisions having been published. Immediately after his appointment he had the legislature pass an act providing for a reporter to the

Chancery Court, and William Johnson was selected. Johnson had been the reporter of the Supreme Court while Kent was a member of it, and the two were great friends. He bears the same relation to Kent that Burroughs does to Lord Mansfield and Boswell to Doctor Johnson. He reported all of the chancery decisions while Kent sat as chancellor. The condition of chancery jurisprudence in America, and especially in New York, at the time Kent accepted the office, is well summed up by Kent himself :

For the nine years I was in that office there was not a single decision, opinion, or dictum of either of my two predecessors cited by me, or even suggested. I took the court as if it had been a new institution and never before known in the United States. I had nothing to guide me, and was left at liberty to assume all such English chancery powers and jurisdiction as I thought applicable under our constitution. This gave me grand scope, and I was only checked by the revision of the senate or Court of Errors. I opened the gates of the court immediately, and admitted almost gratuitously the first year sixty-five counsellors, though I found there had been but thirteen admitted for thirteen years before. Business flowed in with rapid tide. The result appears in the seven volumes of Johnson's Chancery Reports. My course of study in equity jurisprudence was very much confined to the topics elected by the cases. I had previously read the modern equity reports down to that time, and of course I read all the new ones as fast as I could procure them. I remember reading Peere Williams as early as 1792, and made a digest of the leading doctrines. I always took up the cases in their order, and never left one until I had finished it. This was only doing one thing at a time. My practice was first to make myself perfectly and accurately (mathematically accurately) master of the facts. It was done by abridging the bill, and then the answer, and then the depositions, and by the time I had done this slow and tedious process I was master of the case, and ready to decide it. I saw where justice lay, and the moral sense decided the case half the time, and then I sat down to search the authorities until I had exhausted my books, and I might once in a while be embarrassed by a technical rule, but I most always found principles suited to my view of the case, and my object was to discuss a point so as never to be teased with it again, and to anticipate an angry and vexatious appeal to a popular tribunal by disappointed counsel.

Kent's decisions while chancellor cover a wide range of topics, and are so thoroughly considered and developed as unquestionably to form the basis of American equity jurisprudence. His first equity decision concerns itself with the scope of the writ of *ne exeat*, where he holds that the writ cannot be granted for a debt recoverable at law. In the case of *Nicoll vs. Trustees* (Johnson's Chancery, 166), he lays down the doctrine that the peculiar state of property and the oppressive nature of the litigation at law, as to the title, affords a proper ground for the equitable jurisdiction of the court, and that the party may come into equity first to have his title tried at law under its superintendence, or he may have the title established at law before he come into equity. In *Parkhurst vs. Van Cortlandt* (Johnson's Chancery, 274), questions arising under the statute of frauds are dealt with. This case shows Kent's equitable mind to the fullest advantage. While he refused specific performance he retained the bill until compensation was made the petitioner for improvements.

The most important case Kent decided while chancellor was his last, reported under the title of *Jerome vs. Ross* (7 Johnson's Chancery, 315). The opinion is a veritable mine of equity learning. The petitioner sought an injunction against a threatened trespass on his land by commissioners who were building a canal, being authorized thereto by statute. The injunction was denied on the ground that an injunction to restrain a mere trespass, where the injury is not irreparable and destructive to the plaintiff's estate, but is susceptible of pecuniary compensation, could not be granted. This decision is one of the landmarks of equity practice touching injunctions. He reviewed the whole history of the law of injunctions and denied that chancery had power to usurp common-law jurisdiction by means of this writ. In these days, when the instrument of injunction is invoked in every case remediable at law, it might be well for courts to read Kent before granting it. His reasoning shows him to have been in full sympathy with Lord Eldon's views touching equity, to the effect that equity jurisprudence should be systematic and not founded on the mere *ipse dixit* of the chancellor, as Lord Hardwicke and later Sir George Jessel were wont, by their actions, to assume.

While still chancellor, Kent became, in 1822, a member of the convention to revise the state constitution, and in 1823, having attained the age of sixty, he resigned the chancellorship, because the constitution inhibited his holding the office after that age. His retirement was contemplated by the bar with the deepest concern, and the members residing in the City of New York appointed a committee to prepare an address on the occasion, which was adopted, and the committee were requested to transmit the report to him at Albany. The address was signed by all the leading lawyers of the city, and expressed their regret that his term of service had expired.

After his resignation he removed from Albany, where he had lived while chancellor, to New York City, and resumed the delivery of law lectures at Columbia College. He also practiced law as chamber counsel. Out of the lectures he now delivered grew the "Commentaries on American Law," the first edition of which was published in 1826-30. These commentaries have, by their learning, range and lucidity of style, won for him a high and permanent place in the estimation of both English and American jurists.

At the present time there is a *renaissance* in the study of Kent. Oliver Wendell Holmes has, in his edition of the commentaries, pointed out Kent's great juristic powers, while the distinguished English jurist, Sir Frederick Pollock, has on more than one occasion made mention of his indebtedness to Kent. Judge Dillon, in his work on the "Laws and Jurisprudence of England and America," pays this tribute to him:

The American bar and people venerate the name and character of Chancellor Kent. Simple as a child in his tastes and habits throughout his tranquil and useful

life; more than any other person the creator of the equity system of this country, the author of commentaries which, in accuracy and learning, in elegance, purity and vigor of style, rival those of Sir William Blackstone, his name is admired, his writings prized, his judgments at law and in equity respected in every quarter of the globe (and nowhere more than in England), wherever in its widening conquest the English language, which is the language of freedom, has carried the English law.

He continued to live in New York City, delivering law lectures and acting as chamber counsel, till his death. He was very fond of country life, and used frequently to go on short pilgrimages to the neighborhood of New York City. He was a man of great purity of character, of singular simplicity and gentleness, and is altogether a conspicuous figure in American history.



KENT, WILLIAM (born in 1802; died in Fishkill, New York, January 4, 1861), was the son of Chancellor Kent. He was early educated to the law and soon rose to considerable prominence in his profession. In 1841 he was appointed circuit judge of the 1st circuit by Governor Seward, holding the position until 1846, when he resigned to accept the professorship of law in Harvard University. In 1847 he resigned from Harvard and returned to New York City. He was a scholarly and able lawyer. He co-operated with Benjamin F. Butler and David Graham the younger in organizing (March, 1838) the law faculty of the University of the City of New York, and was one of its original lecturers.



KERNAN, FRANCIS (born in what is now the town of Tyrone, Schuyler county, New York, January 14, 1816; died in Utica, New York, September 7, 1892), was of Irish descent, being the son of General William Kernan, an influential citizen of Schuyler county. He worked on his father's farm until he was seventeen years old, meantime attending a district school, and then entered Georgetown College, in the District of Columbia, where he remained until 1836. Upon leaving that institution he immediately began the study of law at Watkins, in his native county. In 1839 he entered the law office of Joshua A. Spencer, in Utica, and after his admission to the bar in the following year he became Mr. Spencer's partner. The Utica bar at that period embraced some of the ablest lawyers of the state, including, besides Mr. Spencer, such men as Hiram Denio, Samuel Beardsley, Ward Hunt, William and Charles Tracey and Charles P. Kirkland, and young Kernan very soon took rank with them, being recognized as one of the leading practitioners in central New York. Meantime he took a hearty interest in politics, as a democrat, but never sought office. His subsequent important political career was due to his admitted intellectual fitness as a foremost leader of his party, and not to any personal seeking.

From 1854 to 1857 he served as official reporter of the Court of



Appeals, publishing four volumes of reports. In 1860 he was elected to the assembly, and he was one of the most prominent members of that body. In 1862 he was chosen a representative in congress, defeating Roscoe Conkling. He rendered valuable services in the house as a member of the judiciary committee. He was a candidate for re-election in 1864, but was beaten by Mr. Conkling. In 1867, as a member of the constitutional convention, he aided in framing the new judiciary system of the state. From 1870 until his death he was connected with the board of regents of the State University. He led his party as candidate for governor in 1872, when General Dix was elected to that office, and in 1875 he was chosen by the legislature senator of the United States. He retired from the senate in 1881, the republicans having again gained the ascendancy in the New York legislature.



**KETCHAM, LEANDER SMITH** (born in Marion, Wayne county, New York, August 31, 1818; died in Clyde, Wayne county, New York, March 27, 1870), obtained his legal education by private study, and after admission to the bar was a practitioner in Clyde, New York. He was a surrogate and judge of probate for eight years from 1852, was active in raising troops for the union army and served in the constitutional convention of 1867. His decisions invariably stood the test of review in the higher courts, not one of them being reversed.



**KETCHUM, EDGAR**<sup>1</sup> (born in New York City, in August, 1811; died there, March 3, 1882), studied law in the office of Daniel P. Ingraham, for many years a judge of the Supreme Court of the state, and was at different times associated with the late James W. Gerard (the elder) and the late Isaac Adriance. He practiced in all the state courts, and those of the United States—including the Supreme Court,—conducting many important and celebrated litigations therein. He preferred, however, real estate law and conveying, and devoted himself largely to this branch of practice. He was very familiar with titles, especially in the upper part of Manhattan island, and was often consulted as an expert by other lawyers upon questions of title to property in that part of the city. He was frequently chosen as referee by opposing counsel in cases involving complicated legal questions, and where large interests were represented. In the forties he was public administrator, and later he was appointed loan commissioner of the City and County of New York, serving for twelve years, when he was appointed by President Lincoln interval revenue collector for the 9th district of New York City. In 1867 Chief-Justice Chase made him a register in bankruptcy, which position he held until his death. He gave warm support to the anti-slavery cause, devoted

<sup>1</sup> We are indebted to Colonel A. P. Ketcham (see Vol. ii., p. 232) for the materials for this sketch.      EDITOR.

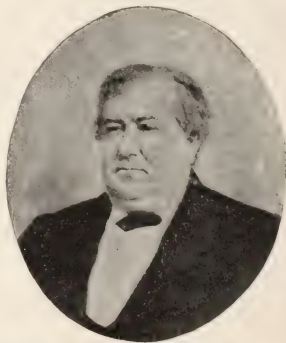
much attention to the public schools of New York City, and was earnestly interested in various benevolent and religious enterprises.



ING, JOHN ALSOP (born in New York City, January 3, 1788; died in Jamaica, New York, July 7, 1867), was the eldest son of Rufus King (q. v.). He was educated abroad and admitted to the bar in New York upon his return. In the war of 1812 he was a lieutenant of cavalry, and afterward he served in the assembly for a number of years, where, though he favored the Erie canal, he took issue against some of De Witt Clinton's measures of policy. Later he went to England with his father as secretary of legation. He was again in the assembly in 1838. As a whig member of congress when the compromise measures, including the fugitive slave law, were adopted, he opposed them vigorously and favored admitting California as a free state. In 1855 he was the presiding officer of the Saratoga convention, which organized the republican party in New York, and he was instrumental, as a delegate to the republican national convention of 1856, in the nomination of Frémont for the presidency. He was governor of New York for one term from January 1, 1857, declining a renomination. In 1861 he was appointed by Governor Morgan a delegate to the peace convention.



ING, PRESTON (born in Ogdensburg, New York, October 14, 1806; drowned in the Hudson river, November 12, 1865), was graduated at Union College in 1827, and after his admission to the bar began to practice in Saint Lawrence county. He early became active politically as a Jacksonian democrat, and in 1830 founded the *Saint Lawrence Republican* at Ogdensburg. He held the office of postmaster of that town, and from 1834 to 1837 he served as a member of the assembly. He was a democratic representative in congress from 1849 to 1853, but afterward became identified with the newly-organized republican party. He was an unsuccessful candidate for secretary of state of New York in 1855. In



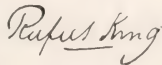
*Preston King*

1857 he was chosen senator of the United States. During the session of the senate early in 1861, before the inauguration of Lincoln, Senator

King made a notable speech declaring his belief that the sections would never be reconciled if to that end it was necessary to render "ignominious submission to traitors," and announcing his readiness to "provide means for the defence of the country by war." He retired upon the completion of his term, in 1863, returning to his professional practice in the City of New York. He took an active part in obtaining the nomination of his friend, Andrew Johnson, for the vice-presidency by the republican national convention of 1864, and by President Johnson's appointment he later became collector of the port of New York. He ended his life—his mind being deranged by troubles—by jumping from a Jersey City ferry-boat.



ING, RUFUS (born in Scarborough, Maine, in 1755; died in New York City, April 29, 1827), the eldest son of Richard King, a prosperous Scarborough merchant, was graduated at Harvard College in 1777, and began the study of law under Theophilus Parsons, at Newburyport, Massachusetts. He accompanied the Rhode Island expedition of General Sullivan in 1778 as aide, and being honorably discharged resumed his legal studies and was admitted to practice. He became one of the leading members of the Massachusetts bar, and soon took a prominent part in public life, being elected to the general court in 1783 and to the continental congress in 1784, 1785, and 1786. His career in congress is especially memorable for the introduction of a resolution by him (1785) providing that "there should be neither slavery nor involuntary servitude in any of the states described in the resolution of congress in April, 1784," which became the basis for the ordinance of 1787 concerning the government of the northwestern territory. He served as a commissioner to determine the Massachusetts and New York boundary, as a commissioner to convey to the United States the lands west of the Alleghenies, and (jointly with James Monroe) as a representative from congress to urge the Pennsylvania legislature to pay the five per cent. interest tax. He was a delegate from Massachusetts to the national constitutional convention, was very prominent in the debates of that body, was one of the members who prepared the final draft of the federal constitution, and subsequently rendered most valuable services in inducing the state of Massachusetts to ratify that instrument.

A handwritten signature in cursive script that reads "Rufus King".

In 1788 Mr. King removed to New York, and although he did not actively practice his profession at the bar in this state, his distinction for many years as a citizen in public employments of great honor and responsibility was the completion of the eminent career for which his attainments as a jurist had laid the foundations. In 1789 he was elected to the legislature, which promptly chose him, with Schuyler, to represent the state in the national senate. He was a warm friend of Alexander Hamilton, and collaborated with him in the "Camillus" letters

in defence of Jay's treaty, Senator King's contributions to those celebrated letters being devoted especially to questions of maritime law and commerce. He was re-elected to the senate, but resigned from that body to become minister to England, serving from 1796 to 1803. Afterward he lived in retirement for ten years at his country home in Jamaica, Long Island. Being again sent to the senate in 1813, he gave earnest support to the government in the war with England, although he had opposed the war on grounds of principle. He was defeated as a candidate for governor, and also as a candidate of the federalists for president against Monroe. He was once more elected to the senate in 1819, being chosen (as he had been in 1813) by a non-partisan vote. Throughout this second period of his senatorial service, extending from 1813 to 1825, he was identified in a very important manner with the consideration of the great measures of public policy. He opposed the creation of the national bank, and also opposed not only the admission of Missouri as a slave state, but likewise the Clay compromise plans, expressing himself decidedly against slavery as a matter of principle. In 1825 he was appointed by President Adams to the British mission, but soon after assuming its duties his infirm health compelled him to resign.



**KIRKLAND, CHARLES PINCKNEY** (born in New Hartford, near Utica, New York, April 7, 1798; died in New York City, August 7, 1883), was a son of Joseph Kirkland, a leading citizen and lawyer of Utica. He was graduated at Hamilton College in 1816, and was prepared for the bar at the Litchfield, Connecticut, Law School, which was then at the height of its prosperity and renown. He practiced in Utica until 1851, first in partnership with his father and later with William J. Bacon, afterward justice of the State Supreme Court. In 1838 he became mayor of Utica, and he was a member of the New York constitutional convention of 1846, taking a conspicuous part in its deliberations. During his early professional career he was constantly occupied as counsel before the Court of Errors and the old Supreme Court. In 1851 he removed to New York City, where he continued to live until his death. He ranked as one of the most important members of the metropolitan bar, possessed a very large practice, and was noted for his indefatigable industry.



**NICKERBOCKER, HERMAN** (born in Albany, New York, July 27, 1782; died in Williamsburg, New York, January 30, 1855), was a son of Johannes Knickerbocker, and inherited from him the large Knickerbocker estate at Schaghticoke.<sup>1</sup> He was a college graduate, was admitted to the bar, practiced

<sup>1</sup> The ancestor of the Knickerbocker family was Herman Jansen Knickerbocker, who emigrated from Friesland, Holland, and was one of the earliest settlers. His property was the result of a grant from the city of

Albany. Johannes Knickerbocker, the father of Herman, was a colonel in the Revolution, being present at Burgoyne's surrender at Saratoga, and later served in the legislature as a member from Rensselaer county.



for a while at Albany, was a federalist member of congress (1809-11), served in the assembly (1817), and was a judge of his county. He dispensed generous hospitality, and was called the "Prince of Schaghticoke." Observing the time-honored custom of his family—which was made a condition of the original grant—he entertained the mayor and council of Albany annually at the mansion. In his latter years he became financially embarrassed.



LANSING, JOHN (born in Albany, January 30, 1754; mysteriously disappeared, December 12, 1829), was the second chancellor of the state. He graduated at King's College, and read law in Albany with Yates (subsequently chief-justice) and then with James Duane in New York City. In 1776-77 he was on Philip Schuyler's military staff. He began the practice of law at Albany, and from 1780 to 1784 he was a member of the assembly from that city. From 1784 to 1786 he was a representative in the continental congress. In 1786 he was chosen to the New York assembly and was elected speaker. He was appointed mayor of Albany in the same year. In 1787 he again went to the continental congress as a delegate, and also was appointed by the New York legislature, with Hamilton and Robert Yates, a delegate to the convention to formulate a federal constitution. After taking part in the deliberations of that body both Lansing and Yates withdrew and refused to vote for the constitution, on the ground that they had been chosen to amend the articles of confederation, not to substitute for them a new scheme of central government; but in 1788, as a delegate to the New York convention called to ratify the instrument, he took a prominent part in advocacy of its adoption. From 1788 to 1798 he was one of the judges of the Supreme Court of New York, becoming in the latter year its chief-justice, in which office he served until 1801, when he was appointed chancellor to succeed Livingston. He retired in 1814. While chancellor he took part in the *cause celebre* of "the matter of Yates." One of the rules of the Chancery Court required solicitors to bring on equity suits in their own names, and not in the name of another solicitor. John Yates, a prominent member of the Albany bar, but not a solicitor in chancery, commenced, through a chancery solicitor, a suit in Lansing's court. As soon as the chancellor discovered that Yates was not a member of his bar he committed him to jail for contempt. Yates retained Thomas Addis Emmet, who applied to Ambrose Spencer, one of the judges of the Supreme Court, for a *habeas corpus*. This being granted, the prisoner was set free. Lansing again committed him to jail, notwithstanding the former release. Emmet applied to the Supreme Court *in banc* for another *habeas corpus*, which was denied by a divided court. Emmet took the case to the Court for the Correction of Errors, and the Supreme Court was reversed and Yates was freed. Yates

then brought an action for damages against the chancellor, but in this he was defeated, it being decided that a judge was not individually liable for his judicial acts. After resigning the chancellorship Lansing lived in retirement. On December 12, 1829, he was in New York City, having come from his home in Albany, and left his hotel to post some letters. He was never seen afterward.<sup>1</sup>



**EARNED, JOSEPH GAY EATON** (born in Thompson, Connecticut, April 29, 1819; died in New York City, June 3, 1870), was graduated from Yale College in 1839, and for eight years was a teacher and tutor. Then he studied for the bar, and practiced for a time in New Haven. Removing to New York in 1852 he assumed prominence in patent law. He became interested in the manufacture of steam fire-engines, and himself largely prepared the designs from which the first engine used in the metropolis was built. He was government inspector of ironclads at the Brooklyn navy-yard in the last years of the war.



**LARREMORE, RICHARD LUDLOW** (born near Astoria, Long Island, September 6, 1830; died in New York City, September 13, 1893), was descended in the paternal line from an English family, and on his mother's side traced his ancestry to the early Dutch settlers of New Netherland. He studied law in the office of Betts & Robinson in New York, and upon being admitted to the bar engaged in practice with Messrs. Scoles and Cooper, who were prominent in the admiralty branches of the profession. Devoting himself to the law of real property, he soon made a high reputation, becoming counsel for the Dry-Dock Savings Institution and other clients who made loans on real estate security. He was frequently solicited to accept trusts as guardian and executor, but always declined. For many years he was an active member of the board of education, and for three years was its president. His firmness prevented that body from coming under the control of the Tweed ring, and effectually stopped a bold attempt to apply to the purchase of school supplies the methods that obtained in the building of the county courthouse. He was a member of the constitutional convention of 1867, taking a prominent part in the debates, especially those concerning educational questions.

In 1870, when the judicial force of the Court of Common Pleas was increased, he was elected to that bench with Hamilton W. Robinson, Joseph F. Daly and Charles H. Van Brunt. Upon the retirement of Charles P. Daly he was chosen chief-justice of the court by his associates. He sat in the Supreme Court by the appointment of the governor.

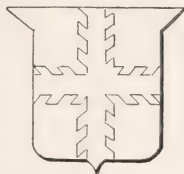
Judge Larremore obtained a recognized position as a very excellent

<sup>1</sup> See p. 111 of this volume.

*nisi prius* judge, and in equity causes, for the determination of which he was specially adapted by his professional experience, he manifested judicial abilities of an exceptional order. His opinions were usually brief, and though reversals fall to the lot of every judge, he was peculiarly fortunate in the appellate court. A good example of his judicial methods may be found in his opinion in *Dupré ex. Rein*, 7 Abb. N. C., 256. That case involved an examination of a tripartite agreement between husband and wife with the intervention of a trustee, entered into after the separation of the wedded pair. Citing many authorities, he stated the existing rules regulating the reciprocal duties and liabilities of the parties, and the methods of enforcing them, with great conciseness but with the keenest discrimination. The case has frequently been acted and followed and has received the honor of special mention of the Court of Appeals, an honor seldom falling to a decision at special term.<sup>1</sup>



LAWRENCE, WILLIAM BEACH (born in New York City, October 23, 1800; died there, March 26, 1881), was descended from an old and wealthy New York family, whose ancestor, about the middle of the seventeenth century, received a grant of land on Long Island. His father was a New York merchant. The son was graduated from Columbia College in 1818, and admitted to the bar in 1823. He became secretary of legation and *chargé d'affaires* at London in 1826, and later was in the diplomatic service at Paris. Returning to New York, he became the law partner of Hamilton Fish, lectured on political economy at Columbia College, was eminent at the metropolitan bar, and took a leading part in the Erie railway enterprise. He was prominent in the New York Historical Society, being its vice-president from 1836 to 1845. His legal, historical and miscellaneous writings are numerous. Among them may be mentioned: "Lectures on Political Economy" (1832), "Discourses on Political Economy" (1834), "History of the Negotiations in Reference to the Eastern and Northeastern Boundaries of the United States" (1841), "The Law of Charitable Uses" (1845), an edition of Wheaton's "Elements of International Law" (1855), "*Commentaire sur les Éléments du droit international*" (Leipsic, 1868-80), "*Étude de droit international sur le mariage*" (Ghent, 1870), "Disabilities of American Women Married Abroad" (1871), "The Indirect Claims of the United States under the Treaty of Washington of May 8, 1871, as Submitted to the Tribunal of Arbitration at Geneva"



LAWRENCE ARMS.

<sup>1</sup> This biography is a reproduction, in part, of a Van Hoesen, read before the Association of the Bar of memorial of Judge Larremore by Judge George M. the City of New York.

(1872), "Belligerent and Sovereign Rights as Regards Neutrals during the War of Secession" (1873), and "Administration of Equity Jurisprudence" (1874).

In 1850 Mr. Lawrence removed his residence to Newport, Rhode Island, and for the rest of his life he was a citizen of that state, serving a term as lieutenant-governor (1850), and for a part of the time being acting-governor. In 1873 he argued the important case of the *Circasian* before the British and American international tribunal at Washington, which resulted in the only reversal of a decision of the Supreme Court that has ever been obtained. He has left a reputation as one of the foremost American authorities on international law.

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**LEAVENWORTH, ELIAS WARNER** (born in Canaan, New York, December 20, 1803; died in Syracuse, New York, November 25, 1887), was graduated from Yale College in 1824, and after studying under William C. Bryant was, in 1827, admitted to the bar. He continued in practice at Syracuse until 1850. He filled the various offices of mayor of Syracuse (1849 and 1859), member of the assembly (1850 and 1857), secretary of state of New York (1854-55), president of the board of quarantine commissioners (1860), regent of the State University from 1860 and afterward chancellor of the board of regents, trustee of the State Asylum for Idiots for more than twenty years, member of congress (1875-77) and commissioner on the boundary between New York and New Jersey and New York and Pennsylvania. He compiled a genealogy of the Leavenworth family.

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**EVERIDGE, JOHN** (born in New York City, September 15, 1792; died there, February 17, 1886), was, notwithstanding his extreme age—he died in his ninety-fourth year—a practicing attorney until shortly before his death, and was reputed to be the oldest active member of the American bar. He was admitted in 1811, was a private in the war of 1812, was corporation counsel in 1844-45, and was one of the organizers of the Saint Nicholas Club and of the old Public School Society.

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**LEWIS, MORGAN** (born in New York City, October 16, 1754; died there, April 7, 1844), was a son of Francis Lewis, a New York merchant and signer of the declaration of independence. After graduating from Princeton College in 1773 he began to prepare himself for the bar, but abandoned his studies to enlist in the revolutionary army. He served through the war, being aide to General Horatio Gates and quartermaster-general of the northern army, and obtaining distinction for gallantry.



Upon the return of peace he completed his professional education and, entering upon practice, soon became eminent at the bar and conspicuous in public life. He was successively member of assembly, judge of the Court of Common Pleas, state attorney-general (1791), chief-justice of the Supreme Court of New York (1792) and governor (1804). At the expiration of his term as governor he retired to his estate in Dutchess county. In 1812 he declined the office of secretary of war, which had been tendered him by President Madison. In the same year he became quartermaster-general of the armies of the United States, and the next year he was promoted to be major-general, in which capacity he commanded on the Niagara frontier and achieved important successes. "He remitted all arrears of rents that were due from those of his own tenants in Delaware county that had either gone or sent a son to the war, and by his good management avoided on his own estates all anti-rent difficulties." He was grand master of the freemasons and president of the Historical Society and of the Order of the Cincinnati.



*Morgan Lewis.*



**L'HOMMEDIU, EZRA** (born in Stronghold, Long Island, August 30, 1734; died there, September 28, 1811), was descended from Benjamin L'Hommedieu, who emigrated from France after the revocation of the edict of Nantes. He was a Yale graduate, a member of the New York bar, and incumbent of various offices, being a delegate to the New York provincial congress and one of the framers of the state constitution of 1777, a member of the assembly, state senate and council of appointment, regent of the State University and a federalist representative in congress.



**LINN, WILLIAM** (born in New York City, August 31, 1790; died in Ithaca, New York, January 14, 1867), was a successful lawyer at Ithaca. He wrote the "Roorbach Papers" (1844), given to the public as extracts from the travels of Baron Roorbach—whence the political Americanism, "roorbach." He published also a "Life of Thomas Jefferson" (1834) and a "Legal and Commercial commonplace Book" (1850).

*Wm Linn.*



LIVINGSTON, EDWARD (born in Clermont, Columbia county, New York, May 26, 1764; died in Montgomery Place, Dutchess county, New York, May 23, 1836), was a great-grandson of Robert Livingston,<sup>1</sup> the founder of the family in America, a son of Robert R. Livingston (q. v.), justice of the colonial Supreme Court, and younger brother of Chancellor Robert R. Livingston (q. v.). He lived at home in the Clermont manor, hav-



*Edward Livingston*

ing a clergyman as his instructor, until his twelfth year, when he was sent to Albany to school, but from there he was soon taken to Kingston in the County of Ulster and placed under a tutor. While he was in attendance at school in Kingston the British burned the town, and also burned Clermont, the manor-house of Livingston's mother, his father having died a while before. The widow took all her children whom she then had at home, including Edward, to Salisbury in Massachusetts, but soon returned to Clermont, the British having withdrawn, and the manor-house was rebuilt. In 1779 he entered the junior class of Princeton. He graduated in 1781 at the age of sev-

enteen. On leaving college he began the study of law at Albany in the office of John Lansing, afterward one of the chancellors of the state. During this period he made the acquaintance of Aaron Burr. In 1783, after the evacuation of New York City by the British, his mother removed thither and Edward continued his studies there. In 1785 he was licensed to practice as an attorney. While studying law he attracted the attention of Lafayette, who was a frequent guest of his

<sup>1</sup> The American ancestor of the Livingston family, Robert Livingston (born in Ancrum, Scotland, December 13, 1654; died in Albany, New York, April 20, 1725), was a son of Reverend John Livingston, a non-conforming Scotch presbyterian divine, who after the act of uniformity (1663) went to Rotterdam, Holland, dying there in 1672. Robert Livingston arrived in Charlestown, Massachusetts, in 1673, and from there removed to Albany, where he became very prominent. Receiving in 1686 from Governor Dongan a large grant of land, which in 1715 was confirmed by royal charter, i.e. erected the manor and lordship of Livingston, "with the privilege of holding a court leet and a court baron, and

with the right of advowson to all the churches within its boundaries. This tract embraced large parts of what are now the counties of Dutchess and Columbia, New York, and is still known as Livingston manor, though most of it has long since passed out of the hands of the family."\* Robert married the widow of Reverend Nicholas Van Rensselaer, who was the daughter of Philip Petersen Schuyler. Peter Van Brugh Livingston, a prominent merchant, and Philip Livingston, signer of the declaration of independence, were his grandsons.

\* Appleton's "Cyclopedia of American Biography."



*Edw Livingston*



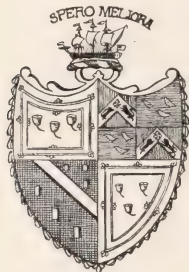


mother's and who probably gave him his first introduction to the French civil law, of which he afterward became a master. In 1788 he married Mary McEvers, daughter of a New York City merchant.

In 1794 he was elected a member of the 4th congress of the United States for the City of New York, and he was re-elected in 1796 and 1798. He acted with the republicans and against the federalists. In 1796 he and Andrew Jackson, who was a member of congress from Tennessee, voted against an address that congress adopted praising Washington's administration. As a member of that body, he participated, in 1795, in the trial of Randall and Whitney by the house for bribery, and the resolutions which he drew up touching their guilt were adopted. He was the author of an act (1796) for the protection of American seamen impressed into the service of foreign powers. He took a memorable part in the congressional proceedings concerning the "Jay treaty matter," which arose over an appropriation required to carry into effect the treaty with Great Britain that John Jay had negotiated in 1794. The debate was participated in by Livingston, Madison, Giles, Sedgwick and Ames. Livingston offered a resolution calling on the president (Washington) to lay before the house a copy of the instructions to Jay, together with the correspondence and other documents relative to the treaty. Washington had previously refused to send the treaty to the house, claiming that in treaty affairs that branch of the government had no jurisdiction. Livingston was the principal advocate of the resolution, and he went into an elaborate examination of the nature and objects of the treaty-making power. He contended that the house possessed jurisdiction, and cited precedents where its discretion in the matter of putting treaties into operation had been recognized by the president. This is one of the great historic debates of the American congress. The Livingston resolution was carried, but Washington still refused to comply, and subsequently another resolution was adopted defining the attitude of the house of representatives in the premises. While a representative in congress he opposed the alien and sedition laws in speeches of great force. In the last congress in which he sat he was leader of the anti-federalist forces, John Marshall being the federalist leader. The Jay treaty dispute was again revived by a resolution censuring President Adams for delivering up as a British subject a man who had murdered another on board a British frigate, the surrender being in accordance with the provisions of that treaty. Livingston contended that as the prisoner claimed to be an American citizen, impressed into the British service, he should have been given a judicial trial on this fact; that it was not for the executive to decide. Marshall vindicated Adams' action in surrendering the fugitive, and thus proceeded a learned debate on the subject of what is a judicial and what an executive act. Livingston's resolution was lost. In the course of his congressional career he offered a resolution to have a committee appointed "to inquire and

report whether any and what alterations should be made in the penal laws of the United States, by substituting milder punishments for certain crimes, for which infamous and capital punishments are now inflicted." The proposed committee was selected, but it never made a report. In 1800 the tie electoral vote between Jefferson and Burr occurred, and the matter was referred to the house. Livingston was most active in support of Jefferson, being the latter's representative and spokesman in the contest. It was owing to his influence that New York's vote was given to Jefferson.

In 1801 he retired from congress, and President Jefferson appointed him district-attorney for the district of New York. In the same year he became mayor of New York City, but he retained the office of district-attorney. He subsequently issued a volume of reports of decisions delivered in the mayor's court while he was mayor. During his mayoralty yellow fever visited the city, and he distinguished himself by making provision for the relief of the afflicted and the prevention of the spread of the disease. In 1803 he resigned both as mayor and district-attorney. His assistant in the office of district-attorney had embezzled government funds to the amount of \$45,000, and Mr. Livingston, being held responsible, made himself penniless in trying to repair the wrong. He confessed judgment in favor of the United States for \$100,000 and also conveyed all his property to a trustee for sale for the purpose of paying the debt.



LIVINGSTON ARMS.

Immediately after his resignation he sailed for New Orleans to begin life anew in that territory, whose purchase from France his brother Robert had negotiated, as a representative of the United States. Arriving in New Orleans in

1804 he at once began to practice, making himself familiar with the details of Louisiana procedure. His business grew with astonishing rapidity. Within a year he came into much prominence as an advocate of the civil as contradistinguished from the common law practice. He contended that a state could adopt what form of procedure it chose, and that the federal constitution did not engraft the common law practice on any state. In this position he has been since sustained by the Supreme Court of the United States. He was asked by the lawyers of the city to prepare a practice code, which he did, and which the Louisiana legislature adopted in 1805. The characteristic feature of this code was the creation of a simple system of statement, each party being required to state in intelligible language the cause of complaint or the grounds of defence. Before he left New York his wife died, and in 1805 he was married again to the widow of a Jamaica Frenchman. In 1806 Governor Wilkinson of Upper Louisiana charged Mr. Living-

ston with being an accessory of Aaron Burr in his treasonable designs on the western territories. This gave rise to an exciting scene in a New Orleans court-room, Livingston denouncing Wilkinson in the most scathing terms. Nothing further came of this matter, and it is commonly agreed that Livingston knew nothing of Burr's schemes. In 1807 occurred the celebrated controversy between President Jefferson and Livingston. Livingston had bought a piece of land jutting into the Mississippi river, called the "Batture Ste. Marie." He proceeded to enclose it. The land had long been used by the public as a place for boats, it being covered with water when the tide rose. President Jefferson took the position that the title to the Batture was in the United States, and the commanding officer at New Orleans was ordered to use military force to eject Livingston. Being dispossessed he began suit in the Virginia District Court against Jefferson for damages, but was defeated in this action, the court (Marshall being chief-justice) deciding that being an action of trespass it was local and had to be brought where the land lay. The "Batture controversy" was a leading topic of political discussion in its day, and both Jefferson and Livingston wrote on the subject long after Jefferson ceased to be president. It may be of interest to note that Chancellor Kent examined Livingston's claim to the Batture property and arrived at the conclusion that he had a title, and that Jefferson's act in excluding him was illegal. In 1814 he took a very active part in the defence of New Orleans against the British. In the battle of January 8, 1815, he was probably the closest adviser of Andrew Jackson, the American commander. All of Jackson's military orders were translated into French and Spanish by him, and thus delivered to those troops. This laid the foundation for a friendship between Jackson and Livingston that was maintained ever afterward.

In 1820 he accepted a seat in the lower house of the Louisiana legislature. He was appointed by that body, with Mocan-Lislet and Derbigny, as a commissioner to draft a civil substantive and adjective code. Mr. Livingston was the most active of the commissioners, and most of the civil code reported to the legislature was his work. It was adopted in 1825. In February, 1821, he was designated by the legislature to revise the entire system of criminal law of the state, and under the instructions given him he framed a statute, reported in 1825, which was styled "A System of Penal Law," and was divided into a code of crimes and punishments, a code of procedure, a code of evidence, a code of reform and prison discipline, and a book of definitions. It is upon the penal code that Livingston's reputation as a codifier chiefly rests. This code has been commended by all the leading European codifiers, and notably by Jeremy Bentham. It was reprinted in England and France. It brought fame to its author, and letters of approval poured in from prominent men all over the world. Its philanthropic provisions have noticeably influenced the penal legis-

lation of several countries. It was adopted by the Louisiana legislature, in the greater part, in 1825.

From 1823 to 1829 Mr. Livingston represented the New Orleans district in congress, Webster, Clay and Randolph being among his associates in the house. He became conspicuous at once, and took a leading part in the debates. His old debt to the government was paid at this period by the transfer of one of the "Batture" lots to it. In the presidential contest of 1824, when Crawford, Jackson, Clay and Adams were candidates and neither had an electoral majority, Livingston most actively favored Jackson and voted for him when the election was thrown into the house. Upon the expiration of his last term he was chosen United States senator for Louisiana, and he entered upon his new duties the same day that Jackson first became president. He was tendered the French mission, but declined it. The most important episode of his senatorial service was his speech on Foot's resolution, violently attacking Daniel Webster, who had charged him with having opposed Washington's administration. He reviewed his own and Andrew Jackson's conduct when, as members of congress, they had voted against the fulsome address to Washington. While in the senate Livingston carried on a very frequent correspondence with Jeremy Bentham, exchanging views on codification subjects. He took occasion as senator to praise the services his brother had rendered in the purchase of Louisiana, and spoke against granting a pension to James Monroe for his part in negotiating the Louisiana purchase. He introduced a bill contemplating a penal code for the federal government, and submitted a draft of such code, but it never became law.

In 1831 he left the senate to become secretary of state to Andrew Jackson. He served for two years, and then was appointed minister to France. As secretary he drafted the celebrated "Nullification Proclamation." He was sent to France to accomplish two objects—first, to procure the payment of a large indemnity sum which had been secured by treaty, of which a part was then overdue from the French government, and second to negotiate a new treaty readjusting the commercial relations of the two countries. Although his mission failed, he obtained a great popularity at home by the spirited manner in which he demanded from the French king his passports.

After Livingston's return to America he went to live at Montgomery Place, the country seat of his sister, Mrs. Montgomery, in Dutchess county, New York, which she on her death had willed him. Here he died. His remains were laid beside those of his mother in the vault of the family at Clermont, the place of his birth. A plain tablet, placed by his wife and daughter in the Dutch Reformed church at the village of Rhinebeck, bears a simple inscription, describing him as "A man for talents equalled by few, for virtues surpassed by none."





LIVINGSTON, HENRY BROCKHOLST (born in New York City, November 26, 1757; died in Washington, District of Columbia, March 19, 1823), a son of Governor William Livingston of New Jersey (q. v.), after graduating from Princeton in 1774, devoted himself heartily to the patriot cause, and during the Revolution served first as aide to General Schuyler and then as aide to General Arthur Sinclair (being present at Burgoyne's surrender), and subsequently was again attached to Schuyler's command with the rank of lieutenant-colonel. From 1779 to 1782 he was private secretary to John Jay, his brother-in-law, at the embassy in Madrid. Returning to America, his vessel was taken by the British, and for a time he was a prisoner of war in New York. In 1783 he was admitted to the bar, having studied under Peter Yates at Albany. Upon engaging in practice in the City of New York he dropped the name of Henry, and in the annals of the bar he is known as Brockholst Livingston. He ranked with Hamilton, Burr, Egbert Benson, and the other famed lawyers of that time, being recognized as "one of the most accomplished scholars, able advocates and fluent speakers of his time in the city, but violent in his political feelings and conduct." He had a very distinguished judicial career, serving from 1802 to 1807 on the State Supreme bench, and in the latter year becoming an associate-justice of the Supreme Court of the United States, as successor to William Patterson. He was a vice-president of the New York Historical Society, a trustee of the Society Library, and one of the original incorporators of the New York City public-school system. He wrote political articles for the press under the name of "Decius."



LIVINGSTON, HENRY WALTER (born in Livingston manor, Linlithgow, New York, in 1768; died there, December 22, 1810), a son of Judge Walter Livingston (q. v.), was a Yale graduate (class of 1786) and entered upon professional practice in the City of New York after his admission to the bar. He married Mary Allen Penn ("Lady Mary"), granddaughter of the Pennsylvania chief-justice. From 1792 to 1794 he was private secretary to Gouverneur Morris, minister plenipotentiary at Paris. Afterward he was judge of the Columbia county Court of Common Pleas, and representative in the federal congress (1803-7).



LIVINGSTON, ROBERT R., 1st (born in New York City in August, 1718; died in Clermont, New York, December 9, 1775), was a grandson of Robert Livingston, founder of the family in America, and son of Robert Livingston, a respectable colonial lawyer. He practiced with much success at the bar for a

number of years, was appointed judge of admiralty in 1760, and in 1763 became fourth justice of the provincial Supreme Court, serving in this position until his death. He held other important offices, being a member of the provincial congress from Dutchess county (1759-68), a representative in the Stamp Act congress of 1765 (in which he opposed the compulsory acceptance of stamps), a commissioner on the New York and Massachusetts boundary (1767 and 1773), and a member of the committee of 1775 which was elected to control in all general affairs. He had the reputation of being the wealthiest landholder in New York. His wife was Margaret Beekman, daughter of Colonel Henry Beekman, and General Richard Montgomery married his daughter Janet.



BEEKMAN MANSION.

Justice R. R. Livingston was somewhat conservative on the question of American independence. He stood for freedom rather than complete independence, favoring the continuance of the colonial form of government, with the proviso that each colonist should be entitled to all the rights of Englishmen. This was the position taken in his opinion in the case of Cunningham's appeal. He did much on the bench to break up the practice of granting general warrants to customs officers to search for dutiable goods. He was one of the influential "associators" against aggressions of the king.



LIVINGSTON, ROBERT R., 2d (born in New York City, November 27, 1746; died in Clermont, New York, February 26, 1813), the first chancellor of the state, was a son of the preceeding and elder brother of Edward Livingston. He went to King's, now Columbia, College, where he graduated in 1765, and then read law and was admitted to the bar in 1773. He at first began practice in New York City in partnership with John Jay. Afterward he was appointed recorder of the city, but was soon displaced by loyalist influence. In 1775 he was elected to the provincial assembly, and he was subsequently sent as a delegate to congress. He was a member (in 1776) of the committee of congress which drew up the declaration of independence, but being summoned to the New York provincial congress his name did not appear among its signers.

He was prominent in the convention at Kingston (1776-77) which framed the first constitution of New York, was elected chancellor and held the office until 1801. During part of this time (1779-81) he was also a delegate to the continental congress. From 1781 to 1783 he was secretary of foreign affairs, and in 1788 he was chairman of the New York convention that ratified the federal constitution. When Washington was first inaugurated president Chancellor Livingston administered the oath to him.

In 1801 he was appointed minister to France by Jefferson, resigning his chancellorship. In 1803 he effected, in behalf of his government, the purchase from France of the vast territory then known as Louisiana, comprising the entire country between the Mississippi and the Rocky mountains. This was the most important transfer by purchase ever made. Napoleon obtained 10,000,000 francs—more than he had been instructed to accept, for the cession,—and Jefferson and Livingston were at the time bitterly censured for rashly concluding so useless a bargain.

While in Paris he met Robert Fulton and became interested in his scheme of steam navigation. In 1809 he and Fulton built the *Clermont* steamer, which was launched on the Hudson river. Previously he had secured from the state legislature a monopoly of steam navigation on the waters of the state, but this grant, after being sustained by Chancellor Kent, was declared invalid by the Supreme Court of the United States in the case of *Gibbons vs. Ogden*. During the concluding portion of his life he was interested in agricultural pursuits and wrote several tracts on those subjects. He was the first to introduce the merino sheep into middle New York. He was one of the founders of the American Academy of Fine Arts in New York.

His opinions while a chancellor were not reported, and he has left nothing that would enable us to gauge him as a jurist. Jefferson wrote of him: "Robert R. Livingston is in every sense of the word a wise, good and great man, one of the ablest of American lawyers and statesmen."



LIVINGSTON, WALTER (born in 1740; died in New York City, May 14, 1797), a grandson of Philip Livingston, signer of the declaration of independence and a grand-nephew of Governor William Livingston of New Jersey (q. v.), was educated for the bar, and, after serving in the New York provincial congresses, was chosen one of the original judges for Albany. He married Cornelia Schuyler, step-daughter of Doctor John Cochrane, and was prominent in public life during the provisional government, being a member of the continental congress in 1784 and 1785, and one of the first commissioners of the treasury (1785).



LIVINGSTON, WILLIAM (born in Albany, New York, November 30, 1723; died in Elizabethtown, New Jersey, July 25, 1790), was a son of Philip Livingston, second lord of the manor, and a brother of Philip Livingston, signer of the declaration of independence. As a youth he was a favorite of his grandmother, Sarah Van Brugh. Graduating with the first honors from Yale College, at the age of eighteen, he devoted himself to the study of the law, first under James Alexander and then under William Smith, being admitted to the bar in 1748. He advanced to the front of the profession and became known as "the presbyterian lawyer." He continued to practice in this state for twelve years, during three of which he served in the legislature as a representative from the manor.

He removed in 1760 to Elizabethtown, New Jersey, building a residence which became historically famous as "Liberty Hall." There John Jay came in 1774 to wed Mr. Livingston's daughter, Sarah Van Brugh, and in 1789 Mrs. Washington, while on her way to meet her husband after his inauguration, was his guest. William Livingston was one of the most eminent revolutionary patriots and statesmen of New Jersey. He represented the province in the 1st, 2d and 3d continental congresses, but was prevented from signing the declaration of independence by his assumption, in June, 1776, of the position of brigadier-general and commander-in-chief of the New Jersey militia, to resist an expected British invasion. He was the first governor of the State of New Jersey, elected in August, 1776. As governor he took a decided attitude in opposition to slavery, recommending its abolition in 1777, and liberating his own slaves as a matter of principle and example. He also obtained the passage of the New Jersey act of 1786, prohibiting slave importation. He was a member of the federal constitutional convention. He declined important offices under the provisional government of the states.

He was conspicuously connected with leading learned societies, and possessed noteworthy intellectual and literary abilities. He opposed the creation of an American episcopate, and upon being chosen a trustee of King's (Columbia) College in 1751 refused to serve because of the requirement that the president of that institution should be a divine of the Church of England. He was for a time president of the celebrated Moot club of lawyers, and he was a collaborator with William Smith in the preparation of "A Digest of the Laws of New York, 1691-1762." His "Life and Letters" was published in 1833 by Theodore Sedgwick, Junior.



LOOMIS, ARPHAXAD (born in Winchester, Connecticut, April 9, 1798; died in Little Falls, New York, September 15, 1885), removed with his parents at an early age to Herkimer county, New York. He worked on a farm until fourteen, when he became a district school teacher. He studied law at Water-




town and Sackett's Harbor, and after his admission to the bar began practice at Sackett's Harbor. In 1827 he located at Little Falls. Between 1827 and 1837 he held the offices of county judge and surrogate of Herkimer county, and from 1835 to 1840 was "first judge" of the same county. In 1837 he was the successful democratic candidate for congress, and served his term while remaining first judge. He was elected to the assembly in 1841, and was a member of the constitutional convention of 1846.

But the most notable service of Judge Loomis was in connection with the code revision of 1847. In 1842 he had been chairman of the assembly judiciary committee, and in that capacity had prepared a bill designed "to improve the administration of justice." He became known as an advocate of legal reformative measures, and upon the selection of the commission to revise the code of practice, in 1847 he was named as one of the commissioners. Nicholas Hill and David Graham were originally named with him; Hill soon resigned, however, and David Dudley Field was appointed in his place. The code of procedure recommended by the commission, as thus constituted, was enacted by the legislature, going into effect in 1848.

Judge Loomis displayed unusual abilities as a public speaker. He wrote much on political subjects, and was the author of a "Historic Sketch of the New York System of Law Reform" (Little Falls, New York, 1879).

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ORD, DANIEL (born in Stonington, Connecticut, September 2, 1795; died in New York City, March 4, 1868), is unfortunate, so far as fame goes, because of the strictly professional character of his pre-eminence. He closely adhered to that tradition of the New York bar that confines the lawyer to his profession and excludes him from the easier honors of the politician which, although frequently far from being an indication of merit or of the possession of abilities that have been a blessing to the community instead of a bane, yet seem to be the only evidences of legal talent which the American public recognize and which suffice to perpetuate the memory of a great lawyer. The brevity of treatment that the lack of such details necessitates, in a mere outline of the points of historic interest in his public career, may very readily convey a false impression in such a case as that of Daniel Lord. To correct this it may be briefly stated that he rose to the highest professional standing, and, among the brilliant lawyers of the New York bar a generation ago, deserves to be named with four or five leaders, including Charles O'Connor, James T. Brady, and William Curtis Noyes.

Graduated from Yale College in 1814, he studied law with George Griffin of New York City, attended the law school at Litchfield, Connecticut, and was admitted to the New York bar in 1817. He began

practice in the City of New York, where he always remained, achieving such distinction that it could be said of him that "for forty years previous to his death there were few great civil cases before the United States or New York state courts in which he was not retained."

He distinguished himself in the United States Supreme Court in the case of the prize ship, *Hiawatha*, involving the questions of blockade and prize, was counsel in the famous cases growing out of the great fire in New York City in 1836 and the cases arising out of the notable panic of 1837, and also argued the historic litigations of the Methodist and Dutch Reformed churches, the insurance cases involving the point of general average, the Mason and Phelps will contest and the will case connected with the establishment of the Leake and Watts Orphan House.

Throughout his long career Mr. Lord persistently refused the many public offices which his high professional rank brought easily within his grasp.



ORD, GEORGE DE FOREST (born in New York City, November 21, 1833; died there, after a brief illness, March 3, 1892), was the younger son of the preceding and of his wife, Susan, daughter of Lockwood de Forest, of New York. His grandfather, Doctor Daniel Lord, was a well-known physician of this city in the early part of the present century. Mr. Lord pursued his preparatory studies partly in New York and partly in Fairfield, Connecticut, where his parents spent their summers. In 1851 he entered Yale College and was graduated with high honors in the now famous class of 1854, delivering the Latin salutatory at commencement. After a year spent in foreign travel, he entered the Harvard Law School, completed the course of study, and was admitted to the bar in New York City in 1859, the same year becoming a partner in the firm of Lord, Day & Lord, composed of his father, his brother, Daniel D. Lord, and his brother-in-law, Henry Day. Of this firm he continued to be a member to the time of his death.

Upon the outbreak of the civil war, although deeply engrossed in the practice of his profession, Mr. Lord was instrumental in the formation of the 22d regiment of the national guard, became 1st lieutenant of Company G, and was with the regiment during its service in the field.

While he was never brought before the public in sensational cases, the respect and esteem with which he was universally regarded, not only by the members of the bar but by all who knew him, were clearly apparent in the deep feeling shown on the occasion of his death. Few men so enjoyed the profound respect and confidence of all with whom he had any dealings. While he never held or sought public office, nor was ever prominently connected with great public enterprises, he was an accomplished lawyer of the highest standing in his profession. He died in the zenith of his professional career.

**L**OTT, JOHN A. (born in 1825; died in Flatbush, Long Island, July 20, 1878), was graduated from Union College in 1823, and, after studying law and being admitted to the bar, began practice in the City of Brooklyn. He was active both as a legislator and upon the bench. He was county judge of Kings county between 1838 and 1842; in 1841 was a member of the assembly, and from 1842 to 1846 a member of the state senate; sat upon the state Supreme Court bench between 1857 and 1865; was in 1869 appointed to fill a short term as judge of the Court of Appeals; between 1870 and 1875 served upon the commission of appeals, and in 1875 was one of the commissioners appointed to formulate a measure for the uniform government of all the cities of the State of New York.

His opinions will be found in the reports of the various courts of which he was a justice. In his later years he was engaged in business enterprises, at the time of his death being president of the Flatbush & Coney Island railroad.

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**L**OWREY, GROSVENOR P. (born in North Egremont, Massachusetts, September 25, 1831; died in New York City, April 21, 1893), was the son of William Lowrey, a native of Claverack, Columbia county, who was of Dutch descent, and of Olive Rouse, of Egremont. He was graduated from the law department of Lafayette College, Easton, Pennsylvania, and was admitted to the bar in Easton in 1854. Locating first in the west, he returned in 1857 to the east, settling in New York City, where he diligently practiced his profession. During the greater part of his practice he was a member of the firm of Porter, Lowrey, Soren & Stone, the senior member being the late John K. Porter.

Mr. Lowrey was for fifteen years general counsel of the Western Union Telegraph Company (from its organization until 1882) and at different times was counsel for the Metropolitan Railway Company, Wells, Fargo & Company, the North American Steamship Company, the United States Express Company, the Baltimore & Ohio Telegraph Company, the Singer Manufacturing Company, the Union Ferry Company, the Knickerbocker Trust Company, and other important corporations. He died universally esteemed, and recognized as one of the leading members of the bar.

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**L**UDLOW, GEORGE DUNCAN, was the last of the royal Supreme Court justices of New York. He was originally apprenticed to an apothecary, but disliking that pursuit, he studied law. Though an assiduous student, his friends generally predicted his failure, as he had a serious impediment in his speech, and were very much surprised at seeing him, when he appeared in his first cause, acquit himself with an ease and fluency altogether

unexpected. In commencing practice he gave his attention exclusively to commercial matters, and acquired so much proficiency that he was constantly employed, either as an arbitrator in deciding mercantile disputes or in the adjustment and settlement of complicated mercantile transactions. This drew him into commercial pursuits and speculations, and having, by honest industry and great assiduity, acquired, at a comparatively early age, an ample fortune, he retired to a handsome estate which he had purchased upon Long Island. Shortly after his retirement he was appointed judge of the Court of Common Pleas, in which he gave so much satisfaction that in 1769 he was made a puisne judge of the Supreme Court. Though he labored under the disadvantage of deafness, in addition to the impediment in his speech, he was, nevertheless, an excellent judge, a man of great integrity, of extensive information, and in private life a most agreeable and entertaining companion.

At the breaking out of the Revolution, he, with Chief-Justice Horsmanden, Justice Thomas Jones, and Jauncey, master of the rolls, adhered to the cause of the crown, while Justice Robert R. Livingston joined the revolutionary party. The royalists retained possession of New York, Long Island, and a part of Westchester, and within these limits the judges who had adhered to the royal cause continued to exercise jurisdiction. Justices Jones and Ludlow retired to their farms on Long Island, but Horsmanden remained in the City of New York, and continued to exercise his functions until his death, in 1778, when the sole administration of judicial affairs was entrusted to Justice Ludlow. Two years after, in 1780, Ludlow, in addition to his powers as justice of the Supreme Court, was created master of the rolls, with power to "hear and determine controversies until civil government should be restored." He also acted as judge in admiralty, and was appointed superintendent of police for Long Island. In the same year, 1780, Robertson, the last of the royal governors, issued a conciliatory proclamation, announcing that he had brought out a royal appointment for supplying the place of chief-justice; and that as soon as the public exigencies would permit, he would give an order for opening the courts of judicature, and convene the assembly. But his proclamation produced no effect, and he did nothing under it until the following year, when he held a court of chancery, in person, about once every month, from the 24th of January, 1781, until the 9th of June, 1783. But little can now be ascertained respecting judicial proceedings in this part of the state during this period, as the loyalists carried off the records relating to it, which had been kept in the City of New York. It is merely known that Justice Ludlow continued to act as the principal judge until the close of the war, when he went to New Brunswick, and became chief-justice of that province.<sup>1</sup>

<sup>1</sup> This sketch is reproduced from Judge Daly's "Historical Sketch of the Judicial Tribunals of New York," pp. 54-55.





**McCOUN, WILLIAM T.** (born in Oyster Bay, Long Island, in 1786; died there, July 22, 1878), was one of the prominent men of the New York bar during the first half of the nineteenth century. When he located in the city and made his residence in Warren street, that section was a suburb. He became prominent in his profession, and was sought repeatedly for office until the creation in May, 1831, of the office of vice-chancellor of the 1st circuit, of which he became the first incumbent, and in which he continued until the Court of Chancery was abolished by the constitution of 1846. He was elected justice of the Supreme Court in the 2d district in 1847, and served a full term, after which he lived a retired life in the place of his birth. He was for a time counsel for the Chemical bank. As a judge he was recognized as exceptionally patient and painstaking in his work. He was one of the founders of the Law Institute Library.

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**McCUE, ALEXANDER** (born in Matamoras, Mexico, in 1827; died in Brooklyn, New York, April 2, 1889), spent his first seven years in the place of his birth. In 1834 his parents removed to Brooklyn, New York, where they formerly had resided. He entered Columbia College, was graduated from that institution in 1846, and went to Europe to complete his studies. Returning to Brooklyn he studied law, began practice, and soon after was appointed assistant-district-attorney of Brooklyn. Active in democratic politics, he ran in 1856 for district-attorney of Kings county, but was defeated. His practice became important and his ability recognized. Two years later he was appointed corporation counsel, and he served three terms. In 1870 he was elected a judge of the City Court of Brooklyn for a term of fourteen years. In 1883, upon the retirement of Judge Wilson, he became chief-judge, serving the remainder of his term in that capacity. His decisions were prepared with great care and seldom overruled. One of them, in the famous Beecher-Tilton case, which had been overruled by the general term, was confirmed by the Court of Appeals.

In 1885 he was appointed by President Cleveland solicitor of the treasury. He remained in Washington two years, after which he was named to succeed Assistant-Treasurer Charles J. Canda in New York City. He held this office at the time of his death.

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**McKEON, JOHN** (born in Albany, New York, in 1808; died in New York City, November 22, 1883), was educated at Columbia College, being graduated in 1825, and after a course of legal study and his admission to the bar began practice in New York City. He was active in politics, and acquired his reputation as a lawyer chiefly as a vigorous public prosecutor, holding office

of this character during a large part of his professional career. He was a member of the assembly from 1832 to 1834, a member of congress from 1835 to 1837, and again from 1841 to 1843, and in 1846 became district-attorney of the County of New York by appointment. The office becoming elective the following year, he was the successful candidate. He was noted for his able and merciless prosecution of guilty offenders, and distinguished himself in many sensational cases. One of the most remarkable of these was the case of the notorious Madame Restell, who had for many years maintained a fashionable abortion establishment on Fifth avenue.

Subsequently to his term of three years as district-attorney of the county Mr. McKeon succeeded Charles O'Connor as United States attorney for the southern district of New York, filling out the unexpired term of the latter. After returning to private practice in 1858, he was retained to conduct many notable prosecutions. These included the trial of the persons charged with attempting to recruit soldiers for the British service in the Crimean war, the prosecution of Captain Westervelt, of the ship *Nightingale*, for carrying on the slave-trade, and the case of the filibusters aboard the captured ship *Northern Light*. Two years before his death, in 1881, Mr. McKeon was again elected to the office of district-attorney of the County of New York.



MAN, ALBON PLATT (born in Constable, Franklin county, New York, January 20, 1811; died in New York City, March 30, 1891), was the son of Doctor Albon Man and Maria Platt, and descended from interesting ancestry.<sup>1</sup> After his father's death in 1820 the family removed to Plattsburg. At sixteen years of age Mr. Man began the study of law at Covington, New York, with his brother-in-law, Judge Parkhurst, subsequently entering the office of Judge William Kent, of New York City. During this period he made a trip to the Mediterranean in a sailing vessel. He was admitted to the bar at Utica in August, 1832, and began practice in New York City in partnership with Stephen C. Williams—an association which continued until 1837, when he became a partner of Walter Edwards. On May 20, 1857, a new partnership was formed with John E. Parsons, and it

<sup>1</sup> Reverend Samuel Man, a graduate from Harvard College in 1665, was his ancestor. His grandfather, Doctor Ebenezer Man, was a surgeon in the continental army during the Revolution. His father, also a physician, was born in Kent, Connecticut, in 1770, and settled in Franklin county, New York, in March, 1803, where he practiced medicine, engaged in the lumber business with his brother, General Alric Man, and held the office of "first judge" of the county for several years. Doctor Man's sister was the wife of Hugh McCulloch, secretary of the treasury. Mr. Man's mother was the daughter of Captain Nathaniel Platt, a revolutionary soldier, who participated in the campaigns on Long Island and in Westchester county. Her grand-

father, Zephaniah Platt, was also a soldier in the Revolution, and at one time a prisoner in the old hulk, *Jersey*. The founder of the family in this country, Richard Platt, was one of the original settlers of Milford, Connecticut. Captain Nathaniel Platt, with three brothers, founded Plattsburg in 1784. One of these brothers, Zephaniah Platt (q. v.), was a member of two revolutionary congresses, the New York constitutional convention of 1776, the committee of safety in 1777, and was state senator and first judge of Dutchess county. His son was Judge Jonas Platt (q. v.). Mr. Man's grandmother, Phoebe Smith, was of the old family of that name of Smithtown, Long Island.

continued without interruption until May 1, 1884, the firm name of Man & Parsons being, with two exceptions, "the oldest unchanged partnership name in the profession in New York."

Many of Mr. Man's most interesting cases in later years were in connection with attempts to establish railways on Broadway, New York City. As counsel of the property owners he appeared before a Supreme Court commission in successful opposition to the petition of the Broadway Underground Connecting Road for the right to tunnel Broadway. Upon the reorganization of the corporation as the Arcade Railway Company, with the revised scheme of an arcade railway on Broadway, he brought suits to restrain construction, and in 1889 obtained a decision in the Court of Appeals declaring the charter of the company invalid.

Mr. Man was one of the active founders of the Bar Association of New York, a member of its executive committee and the first treasurer. He was subsequently vice-president, and was concerned in many of its important reformatory proceedings. He was a republican, a member of the Union League Club of New York City, and of the Madison square church. His family is remarkable for its number of lawyers. Of the five children by his first wife, Mary L. Brower, the sons, William and Frederick H., are well-known lawyers of New York; while of the five children by his second wife, a daughter of Alric Hubbell, of Utica, the three sons, Henry, Alric and Edward, are lawyers.



ARCY, WILLIAM LEARNED (born in Southbridge, Massachusetts, December 12, 1786; died in Ballston Spa, New York, July 4, 1857), was an able lawyer and jurist, although his political career and services to the state and nation as United States senator, governor of New York and cabinet officer under Polk and Pierce overshadow his legal character.

He was graduated from Brown University in 1808, studied law at Troy, New York, and began the practice of law in that city. Upon the outbreak of the war of 1812 a company of infantry of which he was lieutenant offered itself to the governor of the state and was sent to the Canadian frontier, where it obtained the honor of the first capture of a British flag in the war. At the expiration of his term of enlistment he resumed his law practice. He was the political foe of De Witt Clinton, which caused his removal from the office of recorder of Troy, to which he had been appointed in 1816. Becoming editor of the *Troy Budget*, he made it an influential democratic journal, affiliated with the Van Buren faction. In 1821 he became adjutant-general of the state, and in 1823 was comptroller. In 1829 he was appointed a Supreme Court justice, and he remained upon the bench until his election to the United States senate in 1831.

Judge Marcy delivered interesting decisions in the Supreme Court in a number of important cases. The most memorable were those rendered in the trials of the alleged abductors and murderers of William Morgan, who had mysteriously disappeared from his home after it became known that he was about to publish a book in which he claimed to expose the secrets of the fraternity of freemasons. These suits came before Judge Marcy on appeal.<sup>1</sup> Some convictions resulted on the charge of abduction, but the charge of murder was never established judicially. Public sentiment, however, found political expression leading to the formation of an anti-masonic party in this and other states. Only in Vermont was state control secured by the agitators, and in a few years the movement subsided even there.

The two years of his service in the United States senate, from 1831 to 1833, added greatly to Judge Marcy's political prestige. He was chairman of the judiciary committee, and distinguished himself in important debates by speeches in opposition to Clay and Webster. Having been elected governor of New York in 1833, he resigned from the senate and remained governor for three successive terms, until 1839, when Seward defeated him for re-election. From 1839 to 1842, by appointment of President Van Buren, he was one of the commissioners for the adjudication of the claims against the Mexican government. He was chairman of the New York democratic state convention in 1843, was active in the Polk campaign, and upon the election of the latter to the presidency was appointed secretary of war. He occupied that office during the memorable period of the Mexican war. His able administration of the portfolio received no commendation from the whig generals in the field, Scott and Taylor, however, who professed that their movements had been hindered. Under this aggravating attack Marcy finally broke silence and entered upon a defence of his conduct of the war department, which resulted in the complete discomfiture of his opponents. Upon the retirement of Polk Marcy resumed the practice of law, appearing in notable cases, but in 1853 he was once more called into the public service as secretary of state under President Pierce.

His policy on questions of state as a member of these two cabinets gave to him high rank among American statesmen. While secretary of war his diplomatic abilities were of great advantage to the country in the settlement of the Oregon boundary dispute. His discussion as secretary of state of such questions as the dues for navigation of the Danish sound, the enlistment of volunteers for foreign wars, and the status of the Central American states in relation to this country, in view of the traditions associated with the Monroe doctrine, were valuable contributions to the American state papers, and were influential

<sup>1</sup> See 4 Wendell, 229 case of People vs. Mather. The defendant, accused of conspiracy, had been acquitted and the prosecution asked for a new trial. Judge Marcy's opinion covers twenty-seven pages and discusses

the law of trials, the impanelling of juries, and the subject of conspiracies. It is a monument of research and laborious citation of authorities.



in the promotion of settled public opinion. Especially significant was his correspondence with the Austrian government in the case of Martin Koszta, involving entirely new issues in international law. On domestic questions his views were always ably presented, although his judgment has not in every case been vindicated. He favored the enactment of the tariff of 1846. The inevitable development of the slavery question to a final, decisive settlement he did not foresee, but believed that a policy of strict neutrality and non-interference would lead to a gradual subsidence of the agitation.

Secretary Marcy's death was sudden and peculiar. He retired to private life at the close of the Pierce administration. Four months later he was found dead in his library one evening with an open book before him.



MARTIN, ISAAC P. (born in 1815; died in Fort Washington, New York, September 27, 1894), was admitted to the bar at the age of twenty-two and early became a successful practitioner in New York City. His law firm was known, successively, as Martin & Strong, Martin, MacClay & Strong, Martin, Strong & Smith, and Martin & Smith. During the panic of 1873 Martin & Smith were attorneys for the Wall street firm of George B. Grinnell & Co., which had long been known as one of the most solid financial establishments in New York, transacting an enormous business as agents. At this time Grinnell & Co. held for Clark, Schell & Co., bankers, two-thirds of \$17,000,000 of railway securities, upon which the former firm had obtained large loans, having a credit margin of \$2,000,000. When the panic came the market value of the securities fell and the margin of \$2,000,000 was wiped out. Under the rule of the stock exchange hopeless ruin impended. To the astonishment of the creditors and the stock exchange Martin & Strong, as attorneys for Grinnell & Co., began proceedings in bankruptcy and applied to the courts for the appointment of an assignee. This course was unprecedented in the history of speculation and at once tied up a large part of Wall street's stock in trade. Not a single share of the securities that Grinnell & Co. held pledged as security could be sold pending the assignee's appointment. The stock exchange suspended operations for two weeks. Meantime the panic subsided, confidence was restored, and Grinnell & Co. not only met their obligations to the extent of \$15,000,000, but were ready to come out of bankruptcy with a surplus fund of \$750,000.

Mr. Martin accumulated a large fortune.



ARVIN, DUDLEY (born in Lyme, Connecticut, May 6, 1786; died in Ripley, Chautauqua county, New York, June 25, 1856), was educated in the common schools and academies, removed to Canandaigua, New York, read law, and was admitted to the bar in 1811. He served four terms in congress as a whig, three of them continuously, from 1823 to 1829, and again from 1847 to 1849. Between these periods he had removed to New York City, where he enjoyed a large law practice, but vested interests led to his return to Chautauqua county in 1845. During his first period in congress, as second on the committee having a revision of the tariff under consideration, and in the absence of the chairman, he drew up a report on the question of a wool tariff which attracted wide attention and led to the "woollen bill." In 1847, commenting upon the president's message concerning the Mexican war, he discussed the slavery question in terms which were a remarkable forecast of the "irrepressible conflict." As a lawyer he was characterized for eloquence of address and acuteness in cross-examination.

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ARVIN, RICHARD PRATT (born in Fairfield, Herkimer county, New York, December 23, 1803; died in Jamestown, New York, January 11, 1892), was a lineal descendant of Reinold Marvin, one of the original settlers of Hartford, Connecticut. Obtaining a common-school education, he commenced the study of law in the office of George W. Scott in Newark, Wayne county. He afterward studied with Mark H. Sibley in Canandaigua and with Isaac Seeley in Cherry Valley. He was admitted to the bar in New York City (1820), afterward settling in Jamestown, where he early rose to prominence in the profession. In 1835 he was elected to the assembly, and in 1836 and 1838 was chosen to represent the 31st district in congress, serving throughout the whole of Van Buren's administration. He was admitted to practice in the United States Supreme Court while in Washington upon the motion of Daniel Webster. In 1846 he served as a member of the constitutional convention. In 1847 he was elected a justice of the Supreme Court, and in January, 1855, he was appointed to the Court of Appeals. In November of the same year he was re-elected to the Supreme Court, and in 1863 was again appointed to the Court of Appeals. He was chosen for the third time on the Supreme Court bench in 1863, serving until 1873. His judicial career extended over a period of more than twenty-four years. He was one of the best jurists of the state, and was a man of great ability and sterling integrity.



ATHEWS, VINCENT (born in Orange, New York, June 29, 1766; died in Rochester, New York, August 23, 1846), after receiving his education under the famous Noah Webster studied law in the City of New York, was admitted to the bar, and began practice in Elmira, New York, where he became active in public life. He was elected to the assembly in 1793; was a member of the state senate in 1796; in 1798 was commissioner to adjust the land claims under the bounty provisions; and was elected to congress as a federalist for the term from 1809 to 1811. During the three years from 1812 to 1815 he was district-attorney of the state of New York. He resided for a time in Bath, removing to Rochester later on. In 1826 he was once more elected to the assembly, this time from Monroe county, and was chairman of the finance committee in that body. Between 1831 and 1833 he was district-attorney of Monroe county. He was "at the time of his death senior member of the bar of western New York."

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AXWELL, HUGH (born in Paisley, Scotland, in 1787; died in New York City, March 31, 1873), was brought to this country in childhood by his parents, and in 1808 was graduated from Columbia College. He studied law and was admitted to the bar of New York City, where he engaged in practice. In 1814 he was appointed assistant-judge-advocate-general of the United States army. Elected district-attorney of New York county, he served continuously during the long period of twenty years, from 1819 to 1839. Notable among the convictions which he obtained were those of the banker, Jacob Barker, and the ship-builder, Henry Eckford—both well-known citizens—for conspiracy to defraud insurance companies. The poet Halleck wrote some lines in which he attacked Maxwell for his zeal in this case, but the district-attorney was upheld by the general sentiment of the community. From 1849 to 1852 Mr. Maxwell was collector of the port of New York, receiving the appointment as a whig. He was president of the Saint Andrew's Society, and at the time of his death was its oldest member.

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ILLER, THEODORE (born in 1816; died in Hudson, New York, August 18, 1895), was educated at the public schools and admitted to the bar in 1837. He was district-attorney of Columbia county from 1843 to 1845, conducting successfully the prosecutions against the leaders of the anti-rent agitation. He was elected a justice of the Supreme Court in 1861, and during the last four years of his service was presiding justice of the 3d department. In 1874 he was elected to the bench of the Court of Appeals, from which he retired upon reaching the age limit in 1886.



MILLS, ISAAC N. (born in Thompson, Windham county, Connecticut, September 10, 1851), is descended from paternal ancestors who were farmers in the town of Thompson from a period antedating the Revolution. On his mother's side he is descended from a family of Rhode Island Quakers, to a branch of which General Greene, of revolutionary fame, belonged.

At the age of seventeen he entered the Providence Conference Seminary, at Greenwich, Rhode Island, taught district school for a term, working evenings to keep up with his class, and was graduated in the summer of 1870 at the head of his class. Entering Amherst College he took prizes during the course in Latin, Greek, philosophy, physiology, debate, and extemporaneous speaking, and was graduated in 1874 as valedictorian, having also been for two years president of his class. In 1876 he was graduated from Columbia College Law School, and in October of that year was admitted to the bar in New York City. He began practice at Mount Vernon, becoming a member of the law firm of Mills & Wood, this partnership continuing until 1882. Judge Mills won a reputation as an exceptionally successful trial lawyer and appeared in many of the most important litigations of Westchester county, including the contests over the wills of William M. Wallace and Alfred H. Duncombe, both leaving large estates, the case of Reynolds *against* the Bank of Mount Vernon, and the investigation of the Westchester Temporary Home.

In the fall of 1883 he was elected to succeed Judge Gifford as county judge of Westchester county. In the fall of 1889 he was re-nominated by the republican party and re-elected by a largely increased majority, although that party was at that time in a minority in Westchester county. His judicial career has been thus characterized:

It is the unanimous verdict of the bar that he possesses the judicial temperament to a very remarkable degree. He always gives to every lawyer a patient hearing and to every question thorough consideration before rendering his decision. In the trial of cases before his court with a jury he has made a practice, where the case was at all doubtful, of entertaining a motion upon the minutes for a new trial not merely as a matter of form but as a matter of substance, and of hearing full argument upon the motion, reviewing his decision and carefully examining for himself the matters involved, and granting a new trial if finally convinced that material error has been committed. It has also been his practice in deciding any matter at all novel or intricate to file with his decision a written opinion stating clearly the grounds thereof and the reasoning by which his conclusions were reached. This practice has been very generally approved by the bar. His charges to the jury have been greatly commended for their clearness and pre-eminent fairness. . . . As presiding judge of the Court of Sessions, he has conducted the trial of some of the most noted criminal cases ever tried in Westchester county. Among these are the cases of Wing (murder in second degree), Warren (manslaughter), White (rape), and Cassidy (arson). Each of those cases occupied several days in the trial, and were tried by eminent counsel who raised every possible point, and yet no ruling of Judge Mills in any of those cases was found to be erroneous.

In October, 1895, at the close of his second term, the republican



county convention tendered him a re-nomination, which he declined to accept for the reason that under the new constitution the county judge of Westchester county was disqualified from practicing in the Supreme Court or Court of Appeals. While county judge he had continued to practice in those courts. Since 1895 he has devoted himself exclusively to the practice of law, having offices in New York City as well as Mount Vernon.

He is a member of the New York State Bar Association, the Association of the Bar of the City of New York, the Union League Club of New York City, the New York New England Society, Sons of the Revolution, Society of Medical Jurisprudence, Delta Kappa Epsilon Club, New York Republican Club, and the masonic fraternity. He is a well-known speaker upon public occasions—especially in connection with the celebrations held under the auspices of the Sons of the Revolution.



**MITCHELL, WILLIAM** (born in the City of New York, February 24, 1801; died while on a visit to the summer residence of his son, at Morristown, New Jersey, October 6, 1886), was the son of Reverend Edward Mitchell and Cornelia Anderson.<sup>1</sup> He stood at the head of his class in the preparatory school of Joseph Nelson, and was graduated from Columbia College with all the honors in 1820. He studied law with William Slosson, and was admitted to the bar as an attorney in 1823, as solicitor in chancery in 1824, as counsellor at law in 1826, and as counsellor in chancery in 1827. He soon won recognition as a learned lawyer. He edited an edition of Blackstone, with American cases, published in 1841, and was recognized as an expert in real estate, probate and commercial law. Appointed master of chancery in 1840, he distinguished himself in difficult cases and acquired a large practice. He was a justice of the Supreme Court for the 1st judicial district of New York from 1849 to 1858, serving as a judge of the Court of Appeals in 1856, and becoming presiding justice of the Supreme Court of his district in 1857.

A most remarkable tribute to his judicial abilities and fairness is the fact that from his retirement from the bench until his death, by common consent of the legal profession of New York City, he was practically continued in the discharge of important judicial duties, holding court almost continuously as referee for the adjudication of cases assigned to him by the judges or referred to his arbitration by mutual consent of the parties at issue. This was a unique distinction in the degree that he enjoyed it. "His reported opinions," says the venerable Benjamin D. Silliman, "are marked by breadth and force of reasoning and large learning, which give to them permanent value."

<sup>1</sup> His father was born in Coleraine, Ireland, came to America in 1791, resided for a time in Philadelphia, and removed to New York City, which was for many years his residence, and where he died in 1834. Judge

Mitchell's mother was a native of New York City, of Dutch ancestry. She was descended from Peter Andresen, who received a grant of land in New Amsterdam in 1645.



**MONELL, NATHANIEL C.** (born in Sharon, Otsego county, New York, October 3, 1833; died in Albany, September 17, 1892), was one of the most accomplished case lawyers in the United States. He read law with James E. Dewey, of Cherry Valley, and was admitted to the bar in 1856. In 1867 he went to Albany, where he practiced till his death. He was elected in 1871 district-attorney of Albany county. As a practitioner he was engaged in many celebrated cases. His library was probably the most extensive collection of law books ever brought together by an individual. He was noted for his law learning and his kindness of nature. He was the nestor of the Albany bar.

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**MONESSON, ROGER**, one of the early colonial chief-justices (commissioned July 15, 1704), was an able man, who in England had been for two terms a member of parliament and had filled the office of recorder of Southampton (England). He was of an old English family, and came to America with a letter of introduction from William Penn, asserting him to be "well grounded in the law and an honest, good-tempered and sober gentleman." He was a man of learning in his profession, and O'Callaghan says he "did more than any other man to mould the judicial system of both New York and New Jersey." He was, however, a partisan of Lord Cornbury's, and has received from a historical writer "a sentence of stern and unqualified condemnation" for signing the address to the queen justifying the whole of Cornbury's conduct.

He served as chief-justice from 1704 to 1715. He had previously (1703) been commissioned admiralty judge for New York, New Jersey, Connecticut, Rhode Island and Massachusetts Bay.

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**MONELL, CLAUDIUS L.** (born in Columbia county, New York, in 1815; died in Narragansett Pier, Rhode Island, August 1, 1876), was a son of Joseph D. Monell, a prominent lawyer of Columbia county. He studied law in the office of Judge Edmonds and began practice in Hudson as a member of the firm of Hogeboom, Sutherland & Monell. About 1850 he removed to New York and opened a law office in association with his old partner, Judge Josiah Sutherland. After Judge Sutherland's election to congress this association was dissolved. Later he organized the firm of Monell, Willard & Anderson.

In November, 1861, he was elected judge of the Superior Court of the City of New York for a term of six years, and he was re-elected in 1867 and 1873—on the latter occasion for a period of fourteen years. He became chief-justice of the court January 8, 1874, succeeding John

M. Barbour. Judge Monell was a member of the constitutional convention of 1867.

During his early career he wrote a treatise, "Monell's Practice," which, as the first work on the subject after the adoption of the code, was very favorably received.

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ORELL, GEORGE (born in Lenox, Massachusetts, March 22, 1786; died in Detroit, Michigan, March 8, 1845), was graduated from Williams College, and after his admission to the bar in 1811 engaged in practice in Cooperstown, New York. In 1827 he became the first county judge of Otsego county, and in 1832 held the same office again. He was a member of the assembly in 1829. His subsequent career was in Michigan, where he became a distinguished jurist. He was United States judge of that territory from 1832 to 1836; justice of the Michigan Supreme Court from 1836 to 1843 and chief-justice of the same from July 18, 1843, until his death.

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ORELL, GEORGE WEBB (born in Cooperstown, New York, January 8, 1815; died in Scarborough, New York, February 12, 1883), was the son of the preceding, and his wife, a daughter of General Samuel B. Webb. After his graduation from West Point in 1835, he was engaged with the engineer corps in improvements of the Lake Erie harbors, the Ohio and Michigan boundary surveys, and the construction of Fort Adams, at Newport, Rhode Island. Resigning from the army, he engaged in railroad construction in the Carolinas and Michigan, but in 1840 removed to New York City. Here he studied law, and practiced. From 1854 to 1861 he was United States Circuit Court commissioner for the southern district of New York. He rose to the rank of major-general during the civil war, and afterward retired to country life at Tarrytown, New York.

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ORGAN, CHRISTOPHER (born in Aurora, Cayuga county, New York, June 4, 1808; died in Auburn, New York, April 3, 1877), was graduated from Yale College in 1828. After studying law with William H. Seward and being admitted to the bar, he became Mr. Seward's partner, and he attained to considerable prominence in public life. He was a member of congress for two terms, from 1839 to 1843, and from 1848 to 1852 was secretary of state of New York. He was long a trustee of the lunatic asylum at Utica, a state institution. For a time he was a merchant. His brother, Edward Barber Morgan, was the well-known philanthropist, for a time part owner of the New York *Times*, and one of the founders of the Wells & Fargo and the United States express companies.



MORGAN, LE ROY (born in Onondaga county, New York, in 1810; died in Syracuse, New York, May 15, 1880), was admitted to the bar at the age of twenty-two. In 1843 he was appointed to the office of district-attorney of Onondaga county, which he held for three years. He was elected in 1859 a justice of the Supreme Court, and at the end of eight years was re-elected without opposition. He became chief-justice of the court. Upon completing his second term he retired and resumed the practice of his profession. He was a man of learning and ability, and a very useful servant on the bench.



MORRIS, GOUVERNEUR (born in Morrisania, New York, January 31, 1752; died in the same place, November 6, 1816), was the son of Lewis Morris, 2d, and half-brother of Lewis Morris, 3d, signer of the declaration of independence. Although a member of the family most illustrious for legal attainments (with that of Smith as a close rival) in the colonial history of New York and New Jersey, and himself bred a lawyer, the fame of Gouverneur Morris is not at all that of either lawyer or judge. He was admitted to the New York bar in 1771, however, having been graduated from King's College, now Columbia, in 1768. Doubtless this legal training was of great service to the state and the nation, for although Morris was a legislator, statesman, and diplomat, rather than a lawyer, yet in some of these capacities he had much to do with moulding our constitutional law. He served on the committee which drafted the state constitution of 1776; was in 1787 a delegate to the convention that framed the constitution of the United States, and had assigned to him the final revision of that instrument; was confidential agent to negotiate with the



*Gouverneur Morris*

British government respecting the terms of the treaty of peace, and as a member of the United States senate he defended the judiciary system provided by the constitution against those who advocated its abolition. In these respects, his connection with matters of great legal interest was one of unusual import. Full accounts of his services as a statesman and diplomat are easily accessible.





MORRIS, LEWIS, 1st (born in New York City, in 1671; died in Kingsbury, New Jersey, May 21, 1746), the ancestor of a family of lawyers and jurists, was the son of Richard Morris, an officer in Cromwell's army. His parents both dying when he was an infant, he was brought up by an uncle who had large landed interests at Morrisania, Westchester county, now a part of New York City. As a youth Lewis Morris is said to have been quite wayward, and throughout his after career he was erratic, although possessing remarkable abilities. He studied law and engaged in successful practice, being one of the few lawyers of his day in New York and New Jersey who had been bred to their profession. In 1692 he was appointed to the bench of the Superior Court of New Jersey, also becoming a member of the council of Cornbury, the corrupt and effeminate governor of New York and New Jersey. Morris, with William Smith and James Alexander, was of that extraordinary triumvirate in the colony of New York who, with voice and pen and in the courts, made the fight for liberty of opinion, and of the press, and of free criticism of existing government and exposure of any follies or corruption of which it might be guilty, which was echoed through the thirteen colonies, sowing the harvest reaped in the successful struggle for independence a half-century later. (See the sketches of James Alexander, Andrew Hamilton, and especially of William Smith.) It was not in reason that a man like Morris should prove an agreeable councillor to the miserable Cornbury; he was, in fact, a thorn in the latter's side, and was presently expelled from the council. Pugnacious by nature, however, Morris had himself returned to the New Jersey assembly, and induced that body to draw up an indictment of the governor—for which, unfortunately, there were too abundant grounds. This document he took to England, and personally presented to Queen Anne, notwithstanding that she was Cornbury's cousin. As a result the latter was recalled.



*Lewis Morris*

Judge Morris was subsequently appointed second justice of the New Jersey Supreme Court, but probably never took his seat, as he was almost immediately (March 15, 1715) made chief-justice of New

York and New Jersey. In this capacity he presided in the famous case of *Cosby vs. Van Dam*, and surprised the governor by delivering an opinion in favor of the contention of the distinguished counsel for Van Dam, Alexander and Smith, that the court, as constituted, being the creation of the king and not authorized by the legislature, was without jurisdiction or power in the case. Alexander and Smith were later disbarred for maintaining this contention, and Judge Morris was removed from office. He was chiefly instrumental in bringing about the entire separation of the governments of New York and New Jersey. He had been councillor of the colony of New Jersey from 1710 to 1738, and became its acting-governor in 1731 and its governor from 1738 until his death in 1746.



MORRIS ARMS.

**MORRIS, LEWIS**, 2d (born in 1698; died in 1762), was the son of the preceding. He was carefully educated, bred to the law, and subsequently became chief justice of the Vice-Admiralty Court. He was father of Lewis Morris, 3d, signer of the declaration of independence, and of the famous Gouverneur Morris, noticed above; these two sons being by different wives.



**MULLETT, JAMES** (born in Whittingham, Vermont, October 17, 1784; died September 10, 1858), son of a tailor, and himself apprenticed to a millwright at Darien, New York, whither his father removed about 1800, subsequently studied law by himself while performing the duties of clerk for a business firm at Fredonia, New York. Admitted to the bar in 1814, he was a member of the assembly in 1823 and again the following year. In 1841 he located in Buffalo. He was appointed attorney of Buffalo in 1846, and in 1847 was elected a justice of the Supreme Court for the 7th judicial district.



**MUNRO, PETER JAY** (born in Rye, New York, January 10, 1767; died in Mamaroneck, New York, September 23, 1833), was the son of Reverend Henry Munro and Eve, only daughter of Peter Jay. His father was born in Scotland and was compelled to flee to England during the Revolution on account of his British sympathies. At the age of thirteen Peter Jay Munro accompanied his distinguished uncle, John Jay, to Madrid, upon the appointment of the latter as United States minister to Spain in 1779. His previous education had also been under the direction of John Jay. During a residence of three years in Madrid and two in Paris he became profi-

cient in the Spanish and French languages. Returning to New York City in 1784 he studied law with Aaron Burr, and after his admission he soon acquired a large practice, and with comparative rapidity won recognition as one of the leaders of the New York bar.

He was a member of the constitutional convention of 1821, and by appointment of Governor Tompkins was chairman of its judiciary committee. Receiving a severe stroke of paralysis in 1826 while in the discharge of professional duties, he retired to his country estate in Westchester county, where he lived until his death.



MURPHY, HENRY CRUSE (born in Brooklyn, New York, July 5, 1810; died there, December 1, 1882), was one of the most notable figures in the history of the Brooklyn bar, distinguishing himself as a lawyer, as a historian and in public life. He was graduated from Columbia College in 1830, studied law, and began writing for the newspapers. He was admitted to practice in 1833. In 1834 he was appointed assistant-corporation counsel of Brooklyn, and subsequently he became attorney of the city and also corporation counsel. In partnership with John A. Lott from 1835 he enjoyed a large and important practice. He soon took an active part in democratic politics, and frequently contributed articles on current topics to the leading periodicals. Becoming an editor and part proprietor of the *Brooklyn Eagle* in 1841, his policy in connection with this journal attracted attention, leading to his nomination and election as mayor of the city the following year. His administration was characterized by economy in expenditure, but coupled with public improvements, such as the extension of the wharf system. He was at once elected to congress, serving from 1843 to 1847, two terms. He was United States minister to Holland from 1857 to 1861. During these years he made a study of the Dutch period of the Colony of New York, availing himself of the documentary resources which his sojourn at the Hague placed at his disposal. Returning to this country he was elected to the state senate, where he served through six terms. He earnestly supported the government during the civil war. He was a prominent member of the constitutional convention of 1867, having also been chairman of the committee on corporations in the constitutional convention of 1846.

*Henry C. Murphy*

Mr. Murphy was one of the founders of the city library of Brooklyn and of the Long Island Historical Society. His important historical works include De Vries' "Voyage from Holland to America, A. D. 1632-1644," annotated (1853); a "Catalogue of an American Library, Chronologically Arranged" (an account of his own collections, 1853); "Broad Advice to the New Netherlands" (coll. N. Y. Historical Soc.); "The

First Minister of the Dutch Reformed Church in the United States" (The Hague, 1857); "Henry Hudson in Holland: An Enquiry into the Origin and Objects of the Voyage which Led to the Discovery of the Hudson River" (The Hague, 1859); "Anthology of the New Netherlands, or Translations from the Early Dutch Poets of New York, with Memoirs of their Lives" (1865, printed for the Bradford Club); "The Voyage of Verrazano" (Albany, 1865); "Memoir of Hermann Ernst Ludewig," and a translation of the "Voyage to New York," by Jasper Dankers and Peter Sluyter (Brooklyn, 1867).



URRAY, JOSEPH, was one of the most eminent of the colonial lawyers, being at the time of his death (1757) the recognized head of the bar. He was a native of Ireland, came to New York in early life, and studied law here. He married a daughter of Governor Cosby and was called to the council. He amassed a large fortune by his practice and collected a valuable library, which he bequeathed to King's (now Columbia) College. The books were stolen and scattered in the fall of 1776 by Lord Howe's soldiers. Judge Jones declares that they were "publicly hawked about the town for sale by private soldiers, their trulls and doxeys." He affirms that he himself "saw an Annual Register neatly bound & lettered, sold for a dram, Freeman's Reports for a shilling; and Coke's 1st. Institute, or what is usually called Coke upon Littleton, was offered to me for 1s. 6d. I saw in a public house on Long Island nearly 40 books bound and lettered, in which were affixed the arms of Joseph Murray, Esq., under pawn for from one dram to three drams each."

He was for many years attorney-general. As a practitioner he had much legal experience and displayed ability in the argument of law questions, but was not specially remarkable otherwise.



URRAY, WASHINGTON (born in New York City in 1828; died September 19, 1867), was the son of Colonel James B. Murray and Maria Bronson, both representatives of old New York City families. His father entered the war of 1812 as 2d lieutenant of artillery; was promoted before its close to lieutenant-colonel; and in 1817 was commissioned colonel of the 4th regiment of New York State artillery. His mother was a daughter of Doctor Isaac Bronson, of New York City, who served as a surgeon in the revolutionary army; was one of the founders of the New York Life Insurance and Trust Company; and carried his bank at Bridgeport, Connecticut, through the war of 1812 without suspending specie payments.

Mr. Murray was graduated from Yale in 1849 and from Harvard Law School in 1851. He was admitted immediately afterward to the



bar in New York City, where he at once commenced practice, becoming a member of the firm of Mott & Murray in 1853, of Mott, Murray & Harris in 1858, and of Murray & Miller in 1865. He followed a varied practice, in which he was eminently successful. He was popular among the members of the bar, and his high professional and private character was universally recognized. In 1856 he married Miss Eliza B. W. Dana, one of the belles of Boston, who survives him.

He was for several years a trustee of public schools in the 18th ward, and was a member of the Union Club. He was only at the threshold of his career when his early death at the age of thirty-nine years ended a professional life of great promise.



**NASH, STEPHEN PAYNE** (born in Albany, New York, August 26, 1821), is the son of David Nash and Hannah Payne. His father, a descendant of Thomas Nash, one of the original settlers in New Haven, Connecticut, in 1638-40, and of Reverend Samuel Stone, pastor of the church at Hartford (1636), died at the early age of forty. His widow, with her young children, moved to Saratoga Springs. Mr. Nash attended the Albany Academy, of which Doctor T. Romeyn Beck was president, and after the removal to Saratoga spent some time in the French college at Chambly, Lower Canada, subsequently entering the law office of Esek Cowen, one of the justices of the Supreme Court living at Saratoga. Chancellor Walworth and Judge Willard, then circuit judge of the Supreme Court, also resided in the same village. There Mr. Nash completed his preparatory professional studies and was admitted to practice in the Supreme Court in January, 1843, receiving at once from Chancellor Walworth, without further examination, his license as solicitor and counsel in chancery. During his clerkship he had assisted Judge Cowen and Mr. Nicholas Hill in their labors on the voluminous "Cowen & Hill's Notes to Phillips' Evidence." Mr. Hill was appointed state reporter in 1842 and removed to Albany.

Upon his admission to the bar Mr. Nash formed a partnership with Augustus Bockes, afterward a judge of the Supreme Court for the 4th judicial district, but soon removed to Albany to become junior partner to Mr. Hill, whom he assisted in the later volumes of his valuable reports. In 1845 he removed to New York City, becoming a member of the firm of Walker & Nash. Shortly afterward he formed with Gilbert M. Speir, afterward a judge of the New York Superior Court, the firm of Speir & Nash, and some seventeen years later, with Edward H. Owen and Joseph H. Gray, the firm of Owen, Nash & Gray. On the dissolution of that partnership he formed with his son, John McL. Nash, and George C. Holt the firm of Nash & Holt, with J. P. Kingsford the firm of Nash & Kingsford, and finally with his son and Mr. Charles L. Jones the present firm of S. P. & J. McL. Nash.

Mr. Nash's admission to the chancery bar, prior to the abolition of that court by the constitution of 1846, may to some extent explain the bent of his studies. While he has had a varied experience in all branches of civil jurisprudence, he has distinguished himself in a special way in the line of cases which involve equity law and the remedies by which equitable as distinguished from purely legal rights are enforced. The range of his professional work is illustrated by such cases as *Spear vs. Wardell*, in the first volume of the New York Court of Appeals Reports; *Dupuy vs. Wurtz* (53 N. Y.), *Fowler vs. New York Gold Exchange Bank* (67 N. Y.), and many others in the series down to *Holley vs. Hirsch* (135 N. Y.), and *Smith vs. Parsons* (146 N. Y.). In the United States Courts, among other interesting cases was that of *Caujolle vs. Ferrie* (13 Wallace), *Clark vs. Iselin* (21 Wallace), *Macon vs. Lamar* (114 U. S.), and *Liverpool & Great Western Company vs. Phenix Insurance Company* (115 U. S.).

Being a member of the Episcopal Church, Mr. Nash early became connected with the various organizations of that communion in the diocese of New York. He has been for many years a member of the standing committee of the diocese of New York, became a vestryman of Trinity Church in 1868, and is a trustee of the General Theological Seminary of the Episcopal Church. He has represented the diocese of New York in the triennial general conventions of the church since 1880. During this long experience he has become familiar with the laws affecting religious corporations, and has been much consulted in matters of ecclesiastical law. In 1885 he was retained to go to England as an expert witness in the Lauderdale Peerage case, and testified before the committee for privileges of the House of Lords as to the law of marriage in the Colony and State of New York (10 App. Cas. 692, 728.)

He was elected a trustee of Columbia College in 1863, and has taken a very active interest in the work of the Law School of that institution, which has constantly increased in importance, and is now provided with a fully developed faculty of six professors. He received the degree of doctor of laws from Columbia College in 1888 and the same degree from Trinity College, Hartford, in 1891. He was one of the founders of the Association of the Bar in the City of New York in 1869 and 1870, assisted in the preparation of its first constitution, and personally drafted the address by which the organization was recommended to the profession at large. In 1880 he was elected president of the association, succeeding William M. Evarts, its first presiding officer.



EILSON, JOSEPH (born in Argyle, New York, in 1813; died in Brooklyn, New York, January 26, 1888), was of Scotch-Irish ancestry. He first practiced law in Oswego, continuing there until 1844, when he went to New York City. In 1848 he removed to Brooklyn, and the year following was elected one of the

judges of the City Court on the democratic ticket. He was re-elected in 1877, and served as presiding judge until his retirement in 1883, having reached the age limit of seventy years. He presided over many important trials, notably the Heman Earle breach of promise suit and the Tilton-Beecher case.



ELSON, HOMER A. (born in Poughkeepsie, New York, August 31, 1829; died there, April 25, 1891), entered upon the study of the law with Tallman & Dean, in his native town, at the age of sixteen. He was admitted to the bar at majority, but had previously been engaged in trial cases before justices of the peace, and had won a county reputation. In 1855, at the age of twenty-six, he was elected county judge. He held the office, being re-elected, until 1863, when he resigned to take a seat in congress. About this time he also resigned the colonelcy of the 167th regiment of New York state volunteers, which had been raised by his endeavors in 1862. In congress, although an earnest democrat, he gave hearty support to the administration measures which culminated in the emancipation proclamation. Offered by President Lincoln the appointment of minister to Russia, he declined it lest some suspicion might attach to his motives. He was a delegate to the constitutional convention of 1867, and the next year was elected secretary of state. In this office he was *ex officio* a member of the canal and other state boards, and although confronted by the powerful and corrupt Tweed régime he retired with perfectly clean hands and free from political entanglements. In 1881 he was sent to the state senate from a district which had never before given a democratic majority. He was chairman of the senate judiciary committee, which had in charge the revision of the criminal code. He was a prominent candidate in 1882 for the democratic nomination for governor, and on the first ballot received nearly as many votes as Mr. Cleveland. In 1890 he served on the commission appointed to revise the judiciary article of the state constitution.

Judge Nelson, although prominent in politics for many years, never neglected his professional practice, and he constantly appeared as counsel at circuit and general term, both in the 2d department, where he resided, and in New York City, where he had offices since 1872. He frequently argued suits before the Court of Appeals, and almost every volume of the state reports, for a period of nearly twenty years, contains cases in which he was counsel. Some of the representative ones are *Wood vs. Fisk* (63 N. Y., 245), *Johnson vs. Lawrence* (95 N. Y., 154), *Thorn vs. Garner* (113 N. Y., 198), and the Vassar will case. The first three were appeals taken by Judge Nelson, and established new principles in law and equity not only in New York but in other states.



ELSON, SAMUEL (born in Hebron, Washington county, New York, November 10, 1792; died in Cooperstown, New York, December 13, 1873), was of Scotch-Irish descent, the founder of his family having located in Salem, New York, as early as 1760. Judge Nelson attended the common schools, was graduated from Middlebury College in 1813, pursued his legal studies with Chief-Justice Savage of Salem, and after his admission to the bar in 1814, at Madison, New York, rapidly won local distinction for his brilliant professional work as a young lawyer. He also became somewhat active in politics. In 1820 he was a presidential elector, and he was a member of the constitutional convention of 1821. In the latter body he resolutely opposed the system of property qualification for the franchise.

Between 1823 and 1831 he served as circuit judge. In 1831 he became a justice of the state Supreme Court, and in 1837 was made its chief-justice, a position which he held for eight years. He was a member of the constitutional convention of 1846. In 1845, by appointment of President Tyler, he succeeded Smith Thompson as an associate-justice of the United States Supreme Court, and he remained a member of this highest tribunal until October, 1872, when illness caused by exposure while acting on the special commission appointed to arbitrate the *Alabama* claims forced him to resign.

Judge Nelson was characterized by the possession, in a marked degree, of the conservative judicial temperament which is supposed to be especially suited to the requirements of the bench. He was very deliberate in reaching conclusions, and as considerate as possible of those whose contentions he felt compelled to disallow. He disliked to disappoint any; yet it could scarcely be said that he permitted the sentimental disposition to intrude unduly into his decisions. His temperament rather led him to find that mean between the extremes of partisan claims where the truth in a majority of cases is found to lie. Thus his opinions always carried weight, and commanded the attention and respect of lawyers and jurists generally.

The most notable of the historic suits which came before him was, of course, the famous Dred Scott slavery test case. In this instance he concurred with the decision rendered by Chief-Justice Taney upholding the constitutionality of the fugitive slave law. Justice Nelson advanced the opinion that if congress enjoyed power under the constitution to restrict or abolish slavery, it must certainly possess equal power to protect and maintain the same institution. Although his loyalty to the federal government was unquestionable, he deeply deplored the civil war, and at the outset, at least, would undoubtedly have thought peaceful separation the wiser course. He lamented the intrusion of military sway in usurpation of the prerogatives of civil government.

As a member of the joint high commission of arbitrators to adjust the claims of England growing out of the affair of the *Alabama*, to



which he was appointed by President Grant, he performed excellent service for his country. The consideration, candor and judicial spirit exhibited by the American commissioners undoubtedly contributed largely toward arriving at a fair conclusion which the foreign commissioners could accept without imputation upon the dignity of Great Britain. Justice Nelson became a martyr to his service upon this commission. His death followed his resignation from the Supreme Court in a little more than a year.



**NICOLLS** (or **NICOLL**), **MATTHIAS** (born in Islippe, Northamptonshire, England, about 1630; died on Long Island, December 22, 1687), was the son of Reverend Mathias Nicolls, of Plymouth, England, and was carefully educated for the law. He accompanied his kinsman, Colonel Richard Nicolls, upon his expedition of conquest against the Dutch at New Amsterdam, having previously been a barrister of Lincoln's Inn, London. He was secretary of the commission authorized to treat with the Dutch, was a captain in the military under Colonel Nicolls, and carried with him a commission as secretary of the Province of New York, to be used in the event of the success of the expedition. He thus became the first royal secretary of New York under the English. He was also a member of Governor Nicolls' council.

Undoubtedly Judge Nicolls laid the foundations of our jurisprudence, as reformed under the accession of the English. He was a member of the convention at Hempstead, Long Island, which promulgated the famous code known as "The Duke's Laws," and his signature as secretary authenticated this body of law. But while the Hempstead convention was, nominally, a deliberative body, called to ponder and decide weighty matters, as representatives of a free people, it is well known that what was really expected was the solemn approval and loyal support of whatever cut-and-dried programme should be furnished to the assembly. This task the convention performed with every regard for propriety and proper forms. Indeed, it was well that it was so: for Judge Nicolls, substantially the author of the code adopted, was well qualified for the part, and had prepared measures which were ample for the social conditions they had in view, and for the times most liberal. The laws of England, the body of Dutch law, based in turn upon Roman law, and many admirable provisions embraced in the various charters of the New England colonies, had all been utilized for whatever valuable suggestions they appeared to offer.

In various courts Matthias Nicolls participated in the judicial administration and interpretation of the laws he had formulated. He was presiding-justice of the Court of Assizes erected under this code,

sat also in the inferior Courts of Session, and was the first judge of the Court of Common Pleas of New York City. Under the legislative act of 1863, reconstructing the courts, he was appointed a justice of the Supreme Court. He was elected mayor of New York in 1672, being the third to hold that office. He is sometimes referred to in old documents as "Captain Nicolls," since he retained his military command, as also the office of secretary of the province, while holding judicial positions. He had a large estate called "Plandome," of some 2,000 acres, at Little Neck and Great Neck, Long Island.



**NICOLLS** (or **NICOLL**), **WILLIAM** (born in England, in 1657; died at Islip, Long Island, in May, 1723), was the only son of the preceding. He was undoubtedly trained in the law by his father, and began his official career as clerk of Queens county, New York, in 1683. Later, in 1688, he removed to New York City, where he engaged in the practice of law, and soon came into prominence. His sympathies were entirely with the aristocratic party, and in the most vigorous manner he contended against Jacob Leisler and his supporters. Such was his opposition to the assumption of the government by Leisler in 1688, that the latter had him imprisoned. Nicolls had his revenge upon the arrival of Governor Sloughter in 1691, however, and being released from duress soon saw the tables turned, with Leisler on trial for his life, and himself and two other lawyers, James Emott and George Farwell, or Farrawell, engaged in the prosecution. Unfortunately their efforts were only too successful. Leisler was convicted, his judges being his most bitter partisan enemies; the official signature to the death-warrant was obtained by getting the governor drunk, and the liberty-loving Leisler paid the penalty of his excesses in the cause he had championed.

Appointed a member of the council by Governor Sloughter in 1691, Nicolls held his position until removed by Governor Bellomont in 1698, upon evidence of complicity in illicit trade transactions—an offence not reprobated as it should have been in those days of toleration of piracy and smuggling. In 1695 he was the agent of the New York assembly to plead before the king that a proper share of the burden of providing for the defence of the frontiers against the French be borne by the other American colonies.

Among his striking cases as a lawyer, in addition to that of Leisler, were his defences of Nicholas Bayard, in 1702, and of Francis Makemie in 1707. Bayard, the gifted but unscrupulous leader of the aristocratic party, upon receiving news of the appointment of Governor Cornbury, issued a document attacking the government as conducted under Bellomont and Nanfan. On this account he was indicted for high treason—under a law of his own procurement enacted for convenient purposes after the execution of Leisler, which provided that "whatsoever person

or persons shall by any manner of way or upon any pretense whatever endeavor . . . to disturb the peace, good and quiet of their Majesties' government as now established shall be esteemed as rebels and traitors unto their Majesties and incur the pains, penalties and forfeitures as the laws of England have for such offences made and provided." Bayard was prosecuted by Councillor Thomas Weaver, attorney-general Broughton having refused to appear against him; and not even the able defence of his brilliant counsel, William Nicolls and James Emott, was sufficient to save him from conviction under this statute of his own creation, now that the Leislerians had become the partisan judges and himself the victim. Fortunately they did not imitate his own methods against Leisler and Milborne to the bitter end, but granted him a reprieve after frightening him into making an incriminating confession.

Much more to Mr. Nicolls' credit was his able defence of Reverend Francis Makemie, a presbyterian clergyman of Virginia, whom Cornbury imprisoned for the crime of preaching in New York City without the precaution of soliciting the governor's permission, and notwithstanding that the divine had a license from the queen to preach anywhere in her dominions. Nicolls triumphantly acquitted him.

Elected to the New York assembly from Suffolk county in 1701, Nicolls was refused his seat because of non-residence in the county. He was re-elected the following year, however, and became speaker of the house. He was thereafter a member of that body for twenty-one years in succession, and speaker for sixteen years. It cannot justly be said that the career of this talented lawyer was beyond reproach. Of the same party as Bayard, and second to him in the leadership and unscrupulous political intrigueing of his day in the Province of New York, he fully merits a share of the opprobrium which honest criticism must pronounce.



**NICOLLS** (or **NICOLL**), **WILLIAM** (born in 1702; died in 1768), was the son of the preceding, and his wife, Anne, daughter of Jeremias Van Rensselaer and widow of Kilian Van Rensselaer, her cousin. He was well educated, studied law with his father, and was a successful practitioner and long a member of the assembly. He was first elected to that body in 1739, and served in it continuously for twenty-nine years, until his death. During the last nine years he was speaker of the house. He died without issue, never having married.



**NOYES**, **WILLIAM CURTIS** (born in Senodack, Rensselaer county, New York, August 19, 1805; died in New York City, December 25, 1864), was one of the foremost leaders of the New York bar. He did not receive a college education. At the age of fourteen he began the study of law. He was admitted to

the Supreme Court bar in 1827 at Albany and then went to Utica to practice. After a short period of professional life in Utica he removed to New York City. There he quickly established himself as one of the prominent lawyers. His practice in commercial cases became one of the largest in the city, and he was also very conspicuous as an advocate. Among the noted suits he was engaged in were the Rose will case, involving the principles of resulting trusts; the Schuyler over-issue of stock case, in which the officer of a railway company had forged stock certificates and negotiated them, and out of which several hundred suits arose, Mr. Noyes having charge of all the litigations in behalf of the railway; and the Huntington case, where a Wall street broker, tried for forgery, set up the plea of insanity—a plea which was made of no avail by Mr. Noyes' masterly analysis of moral insanity, the accused being convicted despite the very able conduct of the defence by James T. Brady.

In 1857 he was chosen by the legislature as one of three commissioners to codify the laws of New York, David Dudley Field and Alexander Bradford being his associates. Although the code they drafted was never adopted, that part of it which Mr. Noyes prepared has been very highly commended. In 1857 he was a candidate for attorney-general of the state, but was defeated. He was a delegate to the peace conference at Washington.

He collected a remarkable library of legal and other works, which he bequeathed to Hamilton College. His income from practice is said to have been as high as \$100,000 a year during the latter portion of his life. He was noted for his generosity and courteous bearing, and his honesty and integrity were never questioned by the bench or bar. At a bar meeting held after his death Charles O'Connor said, "William Curtis Noyes honored the names of Christian and gentleman, and his decease is a loss not only to his profession, but to the country."



OXON, B. DAVIS (born in Poughkeepsie, New York, in 1788; killed on the railroad at Syracuse, New York, May 13, 1869), received a common school and academic education, studied law under the direction of Philo Ruggles, and was admitted to the bar in 1809. He then engaged in practice at Marcellus, Onondaga county. For a number of years his business was confined to justices' courts. In 1829 he removed to Onondaga Hill, then the county-seat, and eleven years later to Syracuse, where he formed an association with Elias W. Leavenworth and continued to practice until his death, becoming one of the most eminent members of the state bar.

He was specially distinguished in land suits involving matters appertaining to the military tract, and he also had a high reputation for his familiarity with questions of abstract law. He was frequently employed in important criminal suits—notably the case of Wilbur, tried



in Madison county for murder; the Riley case at Batavia, in which he was counsel for the people; that of Marsh *vs.* Hutchinson; that of Randall at Ballston Spa, in which John Van Buren was his associate-counsel and John K. Porter and Samuel Stevens appeared on the other side; and the very celebrated case of Hubbard *vs.* Briggs, tried at the Wayne circuit in 1844 and afterward six or seven times at circuit and on appeal in the Supreme Court and Court of Appeals, which for twenty years occupied the most distinguished lawyers of the state.

Honorable C. B. Sedgwick, in a memorial address on Mr. Noxon, speaking of his abilities as a *nisi prius* lawyer, said:

In knowledge of this branch of the law, in careful preparation, in the acumen necessary to mark every nice distinction, in the skill to detect and expose fraud and perjury, in boldness, tact, pertinacity in his hard logic for the court, and his skillful appeals to juries, he was in the front rank of his profession.



NOXON, JAMES (born in Onondaga Hill, New York, May 17, 1818; died in Syracuse, New York, January 6, 1881), was a son of the preceding. On his mother's side, who was a Van Kleeck, he was descended from an old Knickerbocker family of Dutchess county. He prepared for college at Homer Academy, and after a brief attendance at Hamilton College entered Union, from which he was graduated in 1838. He read law in his father's office, and afterward took the course at the Yale Law School, being admitted to the bar in New York in 1842. Locating at Syracuse he first practiced with his father and then organized the law firm of Noxon & Putnam. Later he was associated with Sidney T. Fairchild, of Cazenovia, and later still with George D. Cowles. He was elected to the state senate from Onondaga county in 1856 and again in 1858. In 1875 he was elected judge of the Supreme Court of the state for a term of fourteen years, to succeed Judge Morgan.



WE, JAMES WARREN (born in De Ruyter, Madison county, New York, June 10, 1814; died in White Plains, New York, December 25, 1876), attended Cortland Academy, at Homer, New York, studied law at Troy, and engaged in practice in Madison county, where he soon won recognition as a lawyer and democratic orator. He first served as district-attorney, and between 1840 and 1848 was county judge of Madison county. He ran for congress on the free-soil ticket in 1848, but was defeated. During the next few years he practiced at Syracuse, whither he had removed, and in 1857 came to New York City to accept the position of president of the newly-created metropolitan board of police. His connection with this office ceased in 1860, when he accompanied William H. Seward through the west on a tour of speech-making in the interest of the republican party.

Appointed governor of the territory of Nevada by President Lincoln in 1861, he exerted a powerful influence on the Pacific slope in favor of the federal government, and was largely instrumental in maintaining the loyalty of that section of the country during the civil war. He was also energetic in bringing about the admission of Nevada as a state, and was one of the first United States senators from that commonwealth. He drew the short term, from 1865 to 1867, but in the latter year was re-elected by the legislature for a full term.



**AKLEY, THOMAS J.** (born in Dutchess county, New York, in 1783; died in New York City, May 11, 1857), was the son of a farmer. He entered Yale in 1797 and graduated in 1801. Immediately after leaving college he commenced the study of the law in Poughkeepsie, being admitted to the bar in 1804. In 1813 and 1815 he was elected to congress. He resumed his practice at Poughkeepsie in 1817. After serving in the legislature, he was appointed, in 1821, attorney-general of the state. In 1827 he was

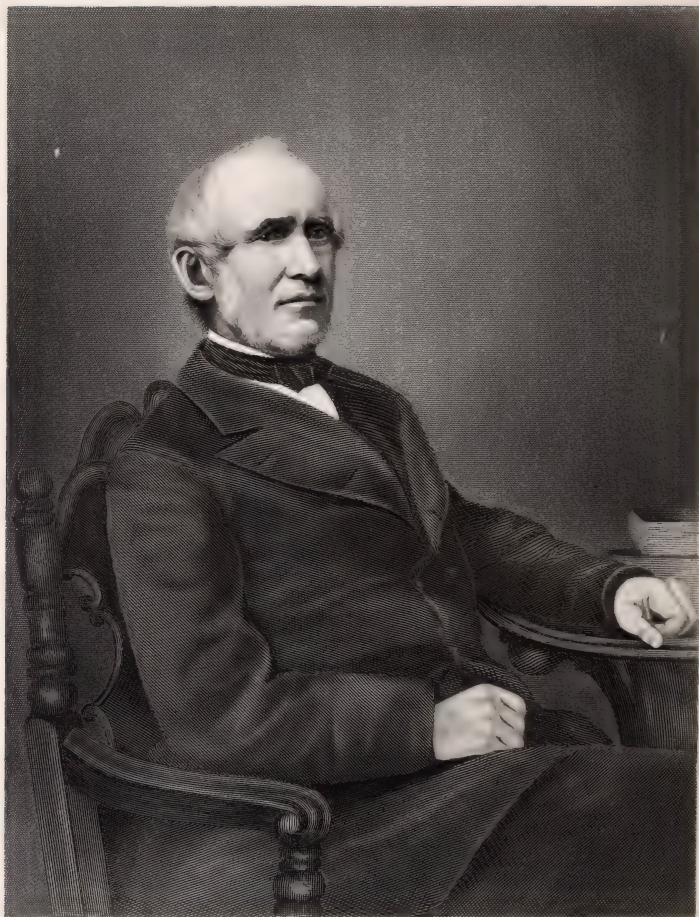


*Thos. J. Oakley*

again elected to congress, but resigned his seat the next year to become a judge of the then newly-created Superior Court of the City of New York. His first associates on this bench were Samuel Jones and Josiah Ogden Hoffman. Jones, who had been chancellor, was chosen chief-justice, and continued in that capacity until 1847, when Judge Oakley succeeded him, retaining the position until his death.

Before he went on the bench he had been employed as counsel in highly important cases. In the celebrated controversy concerning the exclusive right of navigating the waters of New York by steam, granted to the inventor, Fulton, and his patron, Chancellor Livingston (reported in Wheaton's reports under the title of *Gibbons vs. Ogden*), Mr. Oakley bore a leading part as the advocate of the rights of his native state. Thomas Addis Emmet was his associate in this suit, and Webster and Wirt were opposed to him. He also was conspicuous in the notable litigations that sprang up in New York between the landlords of large tracts of land and their tenants—the well-known “manor grants question.” He distinguished himself greatly on the bench. The opinions he delivered made the Superior Court a very high authority on subjects of commercial law.





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CONOR, CHARLES (born in New York City, January 22, 1804; died in Nantucket, Massachusetts, May 12, 1884), was for forty years the acknowledged leader of the New York bar. He was descended from an old and distinguished family living for generations in the Province of Connaught, Ireland. His father emigrated to New York in 1801 and engaged in various literary and journalistic enterprises. The son received almost no education. He entered a lawyer's office at thirteen years of age, and began to carefully study Blackstone and Comyn's Digest. He used afterward to say: "I comprehended Blackstone at that time as thoroughly as I do now." In 1824, at the age of twenty, he was admitted as an attorney of the Court of Common Pleas. By the rules existing at that time an attorney was not permitted to make a motion or argue any matter; this could be done only by a counsellor, and no one could be a counsellor unless he had practiced two years as an attorney and achieved considerable reputation in the lower courts. In Mr. O'Connor's case a very unusual exception was made. On account of his remarkable abilities he was admitted as a counsellor after practicing only three months as an attorney. In 1827 he was admitted to practice in the Supreme Court and the Court of Chancery as attorney, solicitor, and counsellor, which also was an exceptional proceeding, for the rules required practice as attorney and solicitor prior to admission as counsellor.

In the same year he succeeded in a cause that gave him much celebrity among the catholic population of the city. At the annual trustees' election of the catholic church in Barclay street there had been an exciting contest in which the prevailing party had obtained a majority of only two votes. Upon examination of the register of names of those who had participated in the election it was found that two votes had been fraudulently deposited in the names of qualified persons who had recently died. The defeated faction engaged the services of Dudley Selden, a lawyer of considerable prominence, and Thomas Addis Emmet, the most distinguished advocate of the day, who made application to the Supreme Court for a writ of *quo warranto* to set aside the election. The other side retained Mr. O'Connor. He took the ground that it was incumbent on his opponents to show not only that two illegal ballots had been cast, but that they were cast for the prevailing candidates, and would, if rejected, put those candidates in the minority. This view was taken by the court and the application was denied. Another case, about the same time, in which he procured the setting aside of the election of an alderman, gave him a more general reputation, as it displayed to a highly-interested auditory his peculiar skill in eliciting facts and his trenchant mode of conducting a controversy. He also successfully conducted before the county court—then composed of the first and associate judges of the Common Pleas and the aldermen of the city—a notable suit for the removal of a clerk of the justices' court for improper behavior.

But although he gradually acquired a considerable practice in minor litigations, it was fully twenty years before he began to be retained in particularly weighty matters. The first really great case committed to him was the *Lispenard* will suit. By skillful examination of witnesses he succeeded in establishing that the testatrix, Alice Lispenard, had not sufficient mental capacity to make a valid disposition of her real estate. In the *Slave Jack* case and the *Lemmon* slave case he was counsel for the slaveholders. In the celebrated *Forrest* divorce case he manifested an ability, zeal, and perseverance rarely equalled. After a litigation of nineteen years he obtained and collected for Mrs. Forrest a judgment of some \$64,000.<sup>1</sup> Among the other noted suits in which he was chief counsel were the *Parish* will case and the *Jumel* suit.

He was one of the counsel opposed to the Tweed ring, and it was largely through his efforts that that corrupt combination was broken up. In 1877 he was counsel for Mr. Tilden before the electoral commission when the Florida returns were argued.

James C. Carter has said of him :

I believe it would be the deliberate judgment of those who have enjoyed a close acquaintance with Mr. O'Connor and have frequently witnessed his various powers in their full activity, and observed the prodigious extent of his acquirements, that he was, all things considered, the profoundest and best-equipped lawyer that has ever appeared at this bar, and that he would not suffer in a comparison with the great lawyers of any nation or any time.

Throughout life he was a democrat of the extreme school, and during the war he was not identified with the cordial supporters of the government. He became counsel for Jefferson Davis when the indictment for treason was brought against the southern leader. In 1872 he was the presidential candidate of that branch of the democratic party which refused to accept the nomination of Greeley, but he did not carry a single state. During his last years he lived at Nantucket, Massachusetts. In his will he left a large sum of money to the New York Law Institute Library and also about one hundred volumes of records of his own cases. The reports of litigations in which he was engaged are distributed over more than two hundred and fifty official volumes, and, considering the importance of many of these litigations, the significant questions they have settled, and the vast interests they have involved, it cannot be doubted that his place in the annals of the bar and the jurisprudence of New York is clearly at the head of practicing lawyers.

The only political office he held in all his career was that of United States district-attorney for the southern district of New York during a portion of President Pierce's administration.

<sup>1</sup> See p. 204 of this volume.



GDEN, DAVID (born in Newark, New Jersey, about 1707; died in Whitestone, New York, in June, 1800), can hardly be claimed as a New York lawyer, although he tried many famous cases in New York City. He was the leading practitioner of the New Jersey bar of his day, and was one of the great lawyers whose fame extended throughout the colonies. He was graduated from Yale College in 1728; studied law in Newark, New Jersey; was successively a member of the New Jersey provincial council, a justice of the Superior Court and a justice of the Supreme Court. He was a loyalist during the Revolution, and left this country to take up his abode in England. In 1789 he returned, residing afterward at Whitestone, New York.



GDEN, THOMAS LUDLOW (born in Morristown, New Jersey, December 12, 1773; died in New York City, December 17, 1844), was the son of Abraham Ogden, a well-known lawyer of Morristown, New Jersey, and a grandson of David Ogden, noticed above. He was graduated from Columbia College, studied law with his father and with Richard Harison, and was admitted to the bar in New York City in 1796. For some time he was associated in practice with Alexander Hamilton, often handling the important cases of that great statesman when the latter was unable to be present.

He gained wide recognition for great legal abilities, and was in the enjoyment of one of the largest corporation practices, if not the largest, in the City of New York. Among his clients was the Holland Land Company, a notable corporation of those days, owning an immense tract of 3,000,000 acres in western New York. Many of the well-known institutions of the City of New York enjoyed the advantage of Mr. Ogden's services, professional or otherwise. For thirty-five years he was clerk and a vestryman of Trinity church. He was a trustee of Columbia College from 1817 until his death, and he was one of the founders and vice-president of the society for promoting religion and learning in the State of New York, an organization connected with the protestant episcopal church. He was one of the original trustees of the General Theological Seminary, was sole trustee of Sackett's Harbor, and was a trustee of the lands of the Indian reservation.



'GORMAN, RICHARD (born in Dublin, Ireland, in 1820; died in New York City, February 28, 1895), was the son of a wealthy merchant of Dublin, graduated from Trinity College and began the practice of law in his native city. One of the founders of the Young Ireland party of 1848, he soon became entangled in its troubles and was finally indicted for high treason with John Mitchell and Thomas Francis Meagher. He disguised himself as a traveller, and after spending some time on the continent came to

America, settling in Saint Louis. Removing to New York City, he practiced law until 1865, when he was appointed corporation counsel, serving two terms in that office. In 1870 he was a commissioner of immigration and in 1883 he was elected a judge of the Superior Court of the City of New York. He retired in 1890, having reached the age of seventy years.



**BALDWIN, ABRAM** BALDWIN (born in Shaftesbury, Vermont, in 1808; died in the City of Washington, July 7, 1879), was graduated from Williams College in 1835, and studied law at Troy, New York, where he was admitted to the bar. Between 1838 and 1841 he held the office of recorder of Troy. He was a republican, and as such was elected to congress, serving three consecutive terms, from 1857 to 1863. He was appointed a justice of the Supreme Court of the District of Columbia in 1863, and remained upon that bench until his death.



**OSBORN, AUSTIN MELVIN** (born in Windham, Greene county, New York, December 2, 1835; died in October, 1886), was the son of Henry Osborn and Sarah Loomis. He received a classical education under private tuition, and at the age of seventeen entered upon the study of law at Windham in the office of Danforth R. Olney. In 1854 he removed with Mr. Olney to Catskill, the county seat of Greene county, and upon admission to the bar formed at once a partnership with his preceptor, which continued for several years. Afterward he practiced alone. In 1865 he was elected district-attorney of Greene county, serving the full term. In 1870 he was appointed county judge and surrogate. Governor Tilden in 1875 appointed him a justice of the Supreme Court of the state in place of Judge Theodore Miller, who had been elevated to the Court of Appeals bench. In the ensuing fall he was nominated and elected to the Supreme Court for the full term of fourteen years.

As a practitioner Judge Osborn was engaged in nearly every civil case of importance in Greene county. His career on the bench while his health remained was marked by "courteous and dignified manners, unquestionable uprightness and fairness, and a remarkable kindness and considerateness." His death was premature, at the age of fifty-one years, resulting from an incurable ailment which for a considerable period had incapacitated him for the labors of the bench.




**PADDOCK, FRANKLIN A.** (born in Glens Falls, New York, January 30, 1827; died in New York City, January 22, 1890), was the son of Ira A. Paddock, a successful lawyer, of New England ancestry, and a brother of United States Senator Paddock of Nebraska. He was graduated from Union College with

<sup>1</sup> *The Green Bag*, Vol. xxiii., p. 362.




honors in 1847, at the age of twenty, being the youngest in his class. He came to New York City and studied law with Honorable James W. White, and after his admission to the bar practiced continuously and successfully in the metropolis, acquiring a large corporation business. The law firm of which he was the head, Paddock & Cannon, had been in existence for more than a quarter of a century at the time of his death. "While he was not distinguished," says Mr. William P. Chambers, "by shining power of eloquence as an advocate, he was capable of clear and effective presentation of cases at *nisi prius*; and before the court *in banc* he came with all needful learning and logical power." He was a student of French literature, wrote considerable along historical and biographical lines, and was much interested in political reform. As a young man he was an active political speaker.

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AIGE. ALONZO CHRISTOPHER (born in Schaghticoke, Rensselaer county, New York, July 31, 1797; died in Schenectady, New York, March 31, 1868), after being graduated from Williams College, in 1812, began to prepare for the ministry, but presently abandoned theology for the law. He prosecuted his legal studies at Schenectady, was there admitted to the bar in 1819, and at once commenced to practice. He became somewhat active in public life. For four successive terms, from 1826, he was a member of the assembly.

From 1828 to 1846 (when the court ceased to exist), he was the reporter of the Court of Chancery, and compiled some eleven volumes of "Reports of Cases in the Court of Chancery" (New York, 1830-48), of which four volumes were revised and annotated by him at a later period (1856-57). From 1837 to 1842 he was a member of the state senate. Elected to the Supreme Court in 1847, he served four years, subsequently sitting upon the same bench for another two years upon his election to fill a vacancy in 1855. His opinions are considered able. He was an active member of the constitutional convention of 1867.

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AINE, ELIJAH (born in Williamstown, Vermont, April 10, 1796; died in New York City, October 6, 1853), was the son of Honorable Elijah Paine, the Vermont jurist and United States senator. Having been graduated from Harvard College in 1814, he prosecuted his law studies at Litchfield, Connecticut, and was presently engaged in the compilation of law reports. Becoming a partner of Henry Wheaton, he assisted in the preparation of the twelve volumes of the latter's "Reports of the United States Supreme Court from 1816 till 1827." He is the author of Paine's "United States Circuit Reports" (New York, 1827), and issued two

volumes of "Practice in Civil Actions and Proceedings in the State of New York" (1830), in conjunction with the well-known John Duer.

For three years, from 1850 to 1853, he was a justice of the Supreme Court of New York City, and as such distinguished himself by his able decision in the famous Lemmon slave case.

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**ALMER, GEORGE WASHINGTON** (born in Ripley, Chautauqua county, New York, June 7, 1835; died in New York City, January 2, 1887), was graduated from the Albany Law School in 1857. He practiced his profession in New York City between the periods of office-holding. He was assistant-clerk of the United States senate; held a position in the war department; was captain and provost-marshal of the 31st district of New York; military secretary to Governor Fenton; commissary-general of ordnance of New York with the rank of brigadier-general; quartermaster; appraiser of customs of New York City, and later in charge of the law department of the custom house.

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**PARKER, AMASA JUNIUS** (born in Sharon, Litchfield county, Connecticut, June 2, 1807; died in Albany, New York, May 13, 1890), was the son of Reverend Daniel Parker, for twenty years pastor of the congregational church at Sharon. He was educated under the personal supervision of his father, who removed with his family to the State of New York when the son was nine years old. In 1823 he was appointed principal of Hudson Academy, New York, and in 1825 presented himself for examination at Union College for the degree of A. B., being graduated with the class of that year. He resigned his principalship in 1827 to study law with Honorable John W. Edmonds. He completed his legal studies in the office of his uncle, Amasa Parker, at Delhi, Delaware county, New York, was admitted to practice in October, 1828, and became a partner of his uncle, the firm A. & A. J. Parker becoming one of the most eminent and successful in the state. When he was called from the bar to the bench he was familiar with the circuits in Delaware, Greene, Ulster, Schoharie, Broome, Tioga and Tompkins counties, and it was said of him that he had tried more cases in the circuit courts than any lawyer of his age. In 1832 he was surrogate of Delaware county, and the following year was appointed district-attorney, serving three years. The same year he was elected to the state assembly without opposition. He here displayed such scholarly attainments that he was chosen by the legislature a member of the board of regents—the youngest member at that time ever elected,—a post which he filled for ten years. In the fall of 1836 he was elected to the 25th congress, serving from 1837 to 1839. He became judge of the 3d circuit in 1844 and removed to

Albany, where he resided until his death. He was on the bench during the celebrated anti-rent trials, when at one time (in 1845) there were two hundred and forty persons arrested and indicted and in custody awaiting trial at Delhi. He dispatched the entire business in three weeks' time. In 1854 he was elected to the Supreme Court bench, serving one term, one year of which he sat as a judge of the Court of Appeals.

He received the democratic nomination for governor in 1856, running against John A. King, but, although he polled some 10,000 votes more than the Buchanan electoral ticket, was defeated. He was again defeated for governor as a candidate against Edwin D. Morgan in 1858. In 1867 he was elected a member of the convention for the revision of the state constitution.

Judge Parker was throughout his life devoted to educational interests, being connected in important positions with various institutions. With Judge Harris and Amos Dean he founded the Albany Law School. The office of United States attorney for the southern district of New York was offered him in 1859, but was declined. The "Reports of the Decisions in Criminal Cases" (1858-77) were edited by him, and he assisted in the compilation of the three volumes of "Revised Statutes" (1859). He also prepared six volumes of law reports, published at Albany, 1855-69.



PARSONS, GEORGE W. (born in Spencertown, Columbia county, New York, August 24, 1823; died in New York City, January 12, 1887), was graduated from Williams College and Yale Law School, and afterward read law in the office of Theodore Sedgwick, in New York City. He was admitted to the bar in 1843, at the age of twenty, and soon after went into partnership with D. P. Barnard. He next became a member of the firm of Parsons & Riggs, and then of Barney, Bunter & Parsons, and subsequently became counsel to the firms of Riggs & Denman and Taylor & Ferris.

He served as counsel to over thirty insurance companies, and was a recognized authority on insurance law. His opinion in the noted case of Boone *against* the Ætna Insurance Company, which grew out of the war, established a valuable precedent, and was sustained by the United States Supreme Court. His reputation as an insurance lawyer made him a prominent candidate for the nomination to the office of associate-judge of the Court of Appeals in the republican convention held at Saratoga in 1878. His opinions in all cases in which he was referee were noted for soundness and ability. He was identified with various corporations and public institutions, and was a member of the syndicate that constructed the Nickel Plate Railroad, and its counsel. He owned a beautiful country seat on the Hudson.



AULDING, WILLIAM (born in Tarrytown, New York, in 1769 ; died there, February 11, 1854), was the son of William Paulding, a member of the provincial congress of 1775 from Suffolk county, New York, and nephew of the famous John Paulding, one of the captors of Major André during the Revolution. Mr. Paulding was carefully educated, and studied law and practiced his profession in New York City. He was elected to congress in 1811, and was a brigadier-general of volunteers during the war of 1812. He was a member of the constitutional convention of 1821. Between 1824 and 1826 he was mayor of the City of New York.

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ECKHAM, RUFUS W. (born in Rensselaerville, Albany county, New York, December 30, 1809 ; drowned at sea, November 22, 1873), the father of Honorable Wheeler H. Peckham and Justice Rufus W. Peckham, of the United States Supreme Court, was graduated from Union College in his eighteenth year. He read law with Bronson and Beardsley, of Utica, New York, both of whom subsequently became chief justices of the Supreme Court of the state, and early acquired many of the professional characteristics of his distinguished preceptors. Upon attaining his majority he was admitted to the bar, and going to Albany formed a partnership with his elder brother, George W. Peckham. The new firm was soon doing a large business, being represented in almost all the leading cases of the day. In 1838 Mr. Peckham was appointed, by Governor Marcy, district-attorney for the city and county of Albany, serving until 1841. He was a candidate before the state legislature in 1845 for appointment as attorney-general, but failed by a single vote after a sharp contest. He represented his district in the 33d congress, during the administration of Pierce. He refused in congress to be bound by party prejudices against convictions of duty, and opposed the passage of the Nebraska bill. At the expiration of his congressional term he resumed his practice in Albany in association with Lyman Tremain. In the fall of 1859 he was elected a justice of the Supreme Court, and he was chosen for a second term without opposition. While still on the Supreme Bench he was appointed (1870) a judge of the Court of Appeals.

In November, 1873, Judge Peckham with his wife sailed for Europe in the steamer *Ville du Harre*. On the 22d of the month the steamer collided with the British ship *Luck Earn* and went down in the darkness of night. Judge Peckham and his wife were among the two hundred and twenty-six who perished.





PEET, WILLIAM (born at No. 165 William street, New York City, December 4, 1822; died in New York City, June 17, 1895), was the son of Frederick Tomlinson Peet, of Brooklyn, New York, and Elizabeth Lockwood, both born in Bridgeport, Connecticut; and was in the eighth generation in lineal descent from John Peet, of Seven Oaks or Duffield Parish, England.



*Wm Peet*

who sailed from London in 1635 with his sons, John and Benjamin, and settled in Stratford, Connecticut, the following year.<sup>1</sup>

Mr. Peet was educated in Brooklyn at the Eames and Putnam English and Classical Hall, and at other schools until 1839, when he entered as clerk his father's store, in the wholesale dry-goods business, in New York City. In 1843, in his twenty-first year, he left the store and commenced studying under tutor Bull of Yale College. He was graduated from Yale in 1847. During his senior year, having attended the class in the Yale Law School, while keeping up the recitations and lectures of the course in college, he was graduated from the Yale Law School in 1848. He removed to Utica, New York, and entered the law office of Honorable Charles H. Doolittle, afterward judge of the New York Supreme Court, and was admitted to the bar at Syracuse, in November, 1848. He opened offices in New York City, April 19, 1849. In 1852, under the firm name of Peet & Nichols, he associated with himself Charles A. Nichols, this association continuing from 1852 to 1857. At the latter date Mr. Livingston K. Miller entered into the partnership, under the style of Miller, Peet & Nichols. Mr. Nichols removed to Providence, Rhode Island, in 1866, and the firm subsequently became Miller, Peet & Opdyke. After Mr. Miller's death, in 1876, a partnership was formed, with Benjamin H. Bristow, Henry L. Burnett, William S. Opdyke and David Miller, under the firm style of Bristow, Burnett, Peet & Opdyke. The firm was subsequently reorganized as Bristow, Peet & Opdyke, so continuing until Mr. Peet's death, when the firm of Bristow, Opdyke & Willcox was formed.

During the civil war Mr. Peet was commissioner for drafting soldiers in Brooklyn. He was successful in the practice of law and was the author of some fugitive newspaper articles, verses and political sketches, published over the signature of "W. B. H."




**B**ENDLETON, NATHANIEL (born in Culpepper county, Virginia, in 1756; died in New York City, October 20, 1821), distinguished himself at the battle of Eutaw Springs in the Revolution. He entered the patriot army at the age of nineteen, and rose to the rank of major on the staff of General Greene. Studying law at the close of the war, he located in Georgia, and soon

<sup>1</sup> The line of descent is as follows: John Peet<sup>1</sup>, married in England, Sarah, daughter of Richard Osborn; Benjamin Peet<sup>2</sup>, of Stratford, Connecticut, born in England, married Phebe, daughter of Richard Butler; Benjamin Peet<sup>3</sup>, born in Stratford, Connecticut, August 31, 1665, married Priscilla, daughter of Thomas Fairchild and Katharine Craig; Thomas Peet<sup>4</sup>, born in Stratford, Connecticut, July 15, 1698, married, January 7, 1724, Phebe, daughter of Abraham Nichols and Rachel Kellogg; William Peet<sup>5</sup>, born in Stratford, Connecticut, January 29, 1743, married Beulah, daughter of

Captain John Nichols; William Peet<sup>6</sup>, born in Stratford, now Trumbull, Connecticut, June 1, 1763, married, December, 25, 1785, Jemima, widow of Edmund Darrow and daughter of Zachariah Tomlinson and Emma Lewis; Frederick Tomlinson Peet<sup>7</sup>, of Brooklyn, New York, born in Bridgeport, Connecticut, December 21, 1799, married, March 12, 1823, Elizabeth Lockwood, daughter of Lambert Lockwood and Elizabeth Roe, and granddaughter of Reverend Doctor Azel Roe, of Woodbridge, New Jersey, and Rebecca Foote, of Guilford, Connecticut; William Peet<sup>8</sup>, of New York City.

gained distinction in his profession. He became a United States district judge, and his name was considered by Washington for the office of secretary of state. He was a member of the convention of 1787 which framed the United States constitution. Not being in the convention on the final day, his name does not appear among the signers. Coming to New York City in 1796, Judge Pendleton soon commanded recognition of his legal talents, and was accorded a standing among the leaders of the New York bar. Later he became a judge of Dutchess county, where he had a residence. Although Alexander Hamilton had opposed his appointment to Washington's cabinet, under the conviction that he was "somewhat tainted with the prejudices of Mr. Jefferson and Mr. Madison," they became very friendly after Judge Pendleton's removal to New York City. The latter was second to Hamilton in his fatal duel with Aaron Burr.

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HELPS, BENJAMIN KINSMORE (born in Haverhill, Massachusetts, September 16, 1832; died in New York City, December 30, 1880), was the son of Dudley Phelps, a congregational minister. He was graduated from Yale in the class of 1853, conspicuous for the subsequent prominence attained by many of its members, including Andrew D. White, ex-Senator Randall L. Gibson, Wayne McVeagh and Edmund C. Stedman. He studied law in New Hampshire with Benjamin Farley, and later with Townsend, Dyett & Raymond, of New York City. He was admitted to the bar in Poughkeepsie in 1855, and the year following, in partnership with Sherman W. Knevals, commenced practice in New York City. The firm was reorganized in 1872 by the admission of General Arthur, and was subsequently known as Arthur, Phelps, Knevals & Ransom. In 1866 he was appointed an assistant in the United States district-attorney's office, having charge of seizure suits and actions brought against the collector of the port for the recovery of duties paid under protest. He held the same position under Edwards Pierrepont and, for a time, under Noah Davis. He returned to private practice in 1870, taking an active part in politics as a republican. In 1877 he was chairman of the republican central committee, and in 1872 received the nomination of his party for the office of district-attorney of the city. In 1875 he was re-elected to the office, and again in 1878, each time by increasing majorities.

During his term of office he conducted some of the most celebrated cases in the criminal annals of the city. He secured the conviction of the negroes, Weston, Ellis and Thompson, for the murder of Abram Weissberg, a pedlar, and they were hanged; also of Dolan, who murdered Noe, and of Sharkey, the murderer who after sentence escaped from the Tombs through the connivance of Maggie Jordan. He con-

ducted the trial of Cox, the murderer of Mrs. Hull, and was successful in sending the Reverend Mr. Cowley to the penitentiary for inhuman treatment of Louis Victor, an inmate of the "Shepherd's fold." He died while still district-attorney, at the early age of forty-eight.



**PHILIPSE, FREDERICK** (born in New York City in 1690; died there, in 1751), was a grandson of the founder of the family of the same name, the rich merchant who became the first lord of the manor of Philipsborough, in Westchester county, New York. The grandson was not a lawyer, although he had been carefully educated in Europe. Judicial positions were frequently conferred on laymen of wealth and social standing at that period—real



lawyers, or such by training, being scarce in the province. As lord of the manor, Philipse enjoyed the judicial prerogatives of a feudal proprietor. Upon the bench of the court leet and that of the court baron, he adjudicated the causes arising within the jurisdiction of his manor. Even cases of life and death could come before him. But it was

his connection with the more public courts of the Province of New York which justifies a brief notice here.

He was appointed second judge of the Supreme Court on June 24, 1731, and second judge of the same court on August 21, 1733. His especial judicial distinction, not indeed very much to his credit, was his connection with the famous cases of *Cosby vs. Van Dam*, and the prosecution of Peter Zenger for libel.

In the first of these he was named by Governor Cosby, with Chief-Justice Lewis, Morris and James De Lancey, as a court of exchequer to try the governor's case. Philipse and De Lancey were the mere creatures of Cosby in this matter, and rendered such a decision as he desired, Morris and the counsel for Van Dam—Alexander and Smith—being the heroes of the case. At the Zenger trial Philipse and De Lancey revealed themselves in the same unfavorable light.

*no*  
*Peter Zenger*





PIERREPONT, EDWARDS (born in North Haven, Connecticut, November 4, 1813; died in New York City, March 6, 1892), was descended from an old and eminent New England family.<sup>1</sup> He went through the Hopkins Grammar School, at New Haven, and was graduated with honors at Yale. After completing a legal course at the New Haven Law School, under James Daggett and Hitchcock, he went to Ohio (1840), where he practiced successfully for six years in partnership with Honorable Phineas B. Wilcox. Returning to the east he established himself in New York City, and steadily made his way to the front ranks of the profession, being especially conspicuous for his logical qualities and his skill in cross-examining witnesses. In 1857 he was elected a judge of the Superior Court to fill the vacancy caused by the death of Chief-Justice Oakley. He resigned his position on the bench in October, 1860, and resumed his practice.

A staunch democrat before the war, Judge Pierrepont promptly announced his unqualified devotion to the government in its time of trial, and throughout the war he was one of its most active and influential supporters in New York. He was one of the speakers at the Union square meeting of loyal democrats, April 20, 1861, and he co-operated with Hamilton Fish, A. T. Stewart, and other prominent New Yorkers in organizing the union defence committee. With General Dix he was appointed in 1862 a commissioner to try the prisoners of state confined in the government forts and prisons. He was a hearty advocate of Lincoln's re-election in 1864. In 1867 he was employed by the government to take charge of the prosecution of John H. Surratt, indicted as an accomplice in the assassination of President Lincoln. He served in the same year as a delegate to the New York constitutional convention, being a member of its judiciary committee. In the campaigns of 1868 and 1872 he supported General Grant's candidacy. In 1869 he was appointed United States district-attorney in New York. Later he was very conspicuous in the work of the committee of seventy against the Tweed ring, resigning the office of district-attorney to devote himself more actively to this cause.

He became attorney-general in President Grant's cabinet in 1875. In this position he personally conducted various important cases in behalf of the government—notably those of the Union Pacific Railroad and the Arkansas Hot Springs. In May, 1876, he was appointed



PIERREPONT ARMS.

<sup>1</sup> Its American ancestor, John Pierrepont, was a younger son of the noble Pierrepont family of Nottingham, England, which traced its lineage to Robert de Pierrepont, a Norman knight who accompanied William the Conqueror. John Pierrepont came to America in 1650, settled in Roxbury, Massachusetts, and purchased

there a tract of three hundred acres. His son, Reverend James Pierrepont, one of the chief founders of Yale College, was the father of Sarah Edwards, the wife of Jonathan Edwards. Reverend James Pierrepont was the great-great-grandfather of Edwards Pierrepont.

envoy extraordinary and minister plenipotentiary to the court of Saint James. (He had previously, in 1873, declined an offer of the Russian mission.) As minister to England he displayed great tact in delicate negotiations concerning the extradition of criminals, and he concluded with Earl Derby the trade-mark treaty.

Upon his return to the United States, in 1878, he again engaged in the practice of the law. He was associated with the most eminent lawyers of the city in many great suits. Up to the time of his retirement from the bar he was connected with the law firm of Stanley, Brown & Clark.

He was one of the founders of the Association of the Bar of the City of New York, delivering a strong address at the first bar meeting, February 1, 1870.

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LATT, JONAS (born in Poughkeepsie, New York, June 30, 1769 ; died in Peru, Clinton county, New York, February 22, 1834), was a son of Zephaniah Platt (q. v.). Having been admitted to the bar, he commenced the practice of the law at Whitesboro. He held the offices of assemblyman (1796), congressman (1796-1801), state senator (1810-13), member of the council (1813), and Supreme Court justice (1814-23), and after leaving the bench practiced law first in Utica and then in the City of New York. In 1810 he ran for governor of the state, but was defeated.

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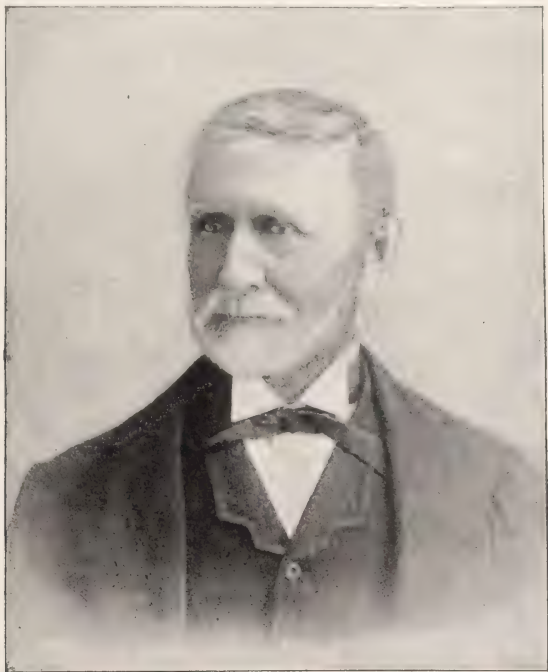
LATT, ZEPHANIAH (born in Dutchess county, New York, in 1740 ; died in Plattsburg, New York, September 12, 1807), was one of the New York members of the continental congress (1784-86), one of the early projectors of the Erie canal, a judge of the state Circuit Court for a long period, and the founder of Plattsburg. He was a college graduate and a good lawyer.

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LATT, LEWIS CANFIELD (born in North Castle, Westchester county, New York, March 13, 1818), was the son of Benoni and Elizabeth Platt, both descended from old and respected families identified with the early history of Westchester county. Reared upon a farm, young Lewis attended the academy at Bedford village and later entered Union College, graduating in the class of 1841. He read law with Samuel E. Lyon, of White Plains, and was admitted to the bar in that village in 1843. He at once opened an office in White Plains, and soon took a position in the first rank of the county bar. In 1846 he was elected supervisor of the town, and in 1847 surrogate of the County of Westchester, holding the office until 1855.

He was the first surrogate elected in the county, the office having been previously an appointive position. During the last year of his term as surrogate he was a candidate for county clerk on the fusion ticket, but, the county being at the time a stronghold of "know-nothingism," he was defeated. During the forty odd years he practiced law in White Plains Mr. Platt transacted a great volume of business, particularly in



*L C Platt*

matters connected with real estate and surrogate practice. Unflagging in industry, he was every working day early and late in his office or in the courts, continuing this close application up to the very day of his last illness. When his son, afterward district-attorney, became of age, he was made a partner, and the firm of L. C. & W. P. Platt ranked among the highest at the bar.

In his political affiliations Mr. Platt was in early life a whig. Following the leaders of the old whig organization into the new republican party, he was a republican on the issues of the civil war. Disagreeing with "radical" policy after the war, he became a "liberal," and supported Greeley for the presidency in 1872. Democratic and liberal leaders urged upon him the nomination for congress, believing he could redeem the district from the republicans, but he declined to make the fight. He was ever afterward a thorough-going democrat. For nine successive years from 1883 he was a member of the board of supervisors, being for a number of years chairman of the judiciary committee of that body.

Mr. Platt's religious connections were with the presbyterian church, of which he was a member and regular attendant. He was also one of the oldest members of White Plains Lodge F. & A. M., having joined May 15, 1859.

During his first term as surrogate Mr. Platt married Miss Laura Popham, of Scarsdale, Westchester county, who, with eight children, five daughters and three sons, survived him.



OMEROY, JOHN NORTON (born in Rochester, New York, April 12, 1828; died in San Francisco, California, February 15, 1885), was a graduate of Hamilton College in the class of 1847 and was admitted to the bar in 1851. He practiced with success in Rochester for a number of years, and coming to New York City in 1864 became a lecturer on law in the College of the City of New York and dean of the legal faculty. From 1869 to 1878 he again was an active practitioner at the bar of Rochester. In the latter year he resumed the congenial work of legal education, accepting the chair of law in the University of California, and he continued in that position until his death.

Professor Pomeroy was one of the best legal scholars of his generation. His writings include "An Introduction to Municipal Law" (1865), "An Introduction to the Constitutional Law of the United States" (1868), "Remedies and Remedial Rights, According to the Reformed American Procedure" (1876), "A Treatise on the Specific Performance of Contract" (1879), "A Treatise on Equity Jurisprudence" (1883), and "A Treatise on Riparian Rights" (1884). He wrote considerably for periodicals on legal and social science subjects, and published new and annotated editions of Sedgwick's "Statutory and Constitutional Law" and Abbott's "Criminal Law."

During the animated contest in the New York legislature over the proposed civil code, a pamphlet written by Professor Pomeroy upon the workings of a similar code in California was circulated by the Bar Association and it proved an important factor in compassing the defeat of the code.





PORTER, JOHN K. (born in Waterford, Saratoga county, New York, January 12, 1819; died in Saratoga, April 11, 1892), was the son of Dr. Elijah Porter, a native of Norwich, Connecticut, who removed to Vermont and accumulated a considerable fortune. The son received a classical education, being graduated from Union College in 1837. He studied law in the office of Judge Nicholas B. Doe at Saratoga, was admitted to the bar at the age of twenty-one, and immediately afterward entered into partnership with Judge Doe. He soon became one of the leading lawyers of that part of the state, being associated in nearly all the important cases arising in Saratoga and the neighboring counties. He devoted himself strictly to his profession, and although as a young man he took some interest in politics, —attending the whig national convention of 1844 as a delegate—he refused all offers of political office. He served, however, in the state constitutional convention of 1846, and, notwithstanding his youth, was one of the prominent members of that famous body.

In 1848 he removed to Albany and formed an association with Deodatus Wright, then recorder of the city. Soon afterward he joined Nicholas Hill and Peter Cagger as junior partner in the firm of Hill, Cagger & Porter. This firm, celebrated in the legal annals of the state, was constantly occupied with suits of the greatest importance. Mr. Porter for several years confined himself to the trial of cases at *nisi prius* and elsewhere, and to the argument of appeals at general term, but upon the death of Mr. Hill, in 1859, he succeeded him in the conduct of the Court of Appeals cases. In conjunction with Charles O'Connor he succeeded over William M. Evarts and ex-Judge Edmonds in the Parish will case. In 1863, in association with William Curtis Noyes, he successfully sustained the constitutionality of the legal tender act of 1862. His argument in this suit is published in full in "Great Speeches of Great Lawyers." He defended Horace Greeley in the libel suit brought by De Witt C. Littlejohn, speaker of the assembly, swaying the jury against an adverse charge by the judge.

In 1864 he was appointed to the bench of the Court of Appeals to fill a vacancy, and at the ensuing election he was chosen for a full term. During the four years of his service he delivered many judicial opinions of great weight and authority. He resigned in 1868 and removed to New York, where he organized the law firm of Porter, Lowrey, Soren & Stone.

Judge Porter's professional career at the metropolitan bar was in every way highly distinguished. Among the clients of his firm were the Western Union Telegraph Company, the Central Pacific Company, and the Gilbert Elevated Railway Company and its successor, the Metropolitan Elevated Railway Company. He took the leading part in the long controversy which led to the absorption of the Atlantic and Pacific Telegraph Company by the Western Union. He was associated with William M. Evarts as counsel for Henry Ward Beecher in the

Tilton suit. In 1877 he obtained decisions by the Court of Appeals affirming the constitutionality of the rapid transit act of 1875.

His last professional appearance in the courts was as prosecutor of Guiteau for the assassination of President Garfield. He was employed by President Arthur and his cabinet in this capacity to assist District-Attorney Corkhill.

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**POTTER, CLARKSON NOTT** (born in Schenectady, New York, April 25, 1824; died in New York City, January 23, 1882), was the eldest son of Bishop Alonzo Potter. He was graduated from Union College in 1842, was for a time a surveyor in Wisconsin, studied law and was admitted in that state, and returned to New York in 1848. He rose to prominence and frequently argued leading causes before the Supreme Court of the United States. In 1869 he appeared before that court in connection with the coin contract and legal tender cases, and his views were sustained. In 1871 the Supreme Court, desiring to rehear the legal tender question, directed a special argument and selected the attorney-general to support and Mr. Potter to oppose the law.

The last ten years of his life Mr. Potter practiced exclusively before the Court of Appeals and the United States courts. Entering politics in 1868, he was elected to the 41st, 42d, 43d and 45th congresses. At the time of his death he was president of the National Bar Association.

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**POTTER, PLATT** (born in Galway, Saratoga county, New York, April 6, 1800; died in Schenectady, New York, August 12, 1891), was graduated from Schenectady College in 1820, afterward studied with Alonzo C. Paige, of Schenectady, and was admitted to the bar in 1824. He practiced law at Menorville until 1833, when he removed to Schenectady to form a partnership with his former instructor, Mr. Paige. In 1839 he was elected district-attorney of Schenectady county, holding the office six years. He was at the same time master and examiner in chancery, being appointed in 1828, and exercising the functions of these offices until the discontinuance of the Court of Chancery, in 1848. In 1857 he was elected judge of the Supreme Court for the 4th district, and again in 1865, without opposition, sitting during the latter term as judge of the Court of Appeals. In 1870 he was appointed associate-justice of the general term for the 3d department. During the same year he caused the arrest of Henry Ray, an assemblyman, for refusing to answer to a subpoena, and was brought before the bar of the house accused of "high breach of privilege." His defence—a complete vindication—was issued by the bar in pamphlet form, and won congratulations from eminent jurists throughout the country. He was also, in 1870, chosen president of the state judicial convention in Rochester.

He published "Potter's Dwarries," a general treatise on the construction of statutes, "Equity Jurisprudence," and "Potter on Corporations" (2 vols., 1879). In 1886 he presented to the New York Historical Society six volumes of the "State Trials of England," at the time of their issue valued at £600.



*Calvin E. Pratt*



**RATT, CALVIN EDWARD** (born January 23, 1828, in Princeton, Worcester county, Massachusetts; died at his Buzzard Bay home, Rochester, Massachusetts, August 4, 1896), was a son of Edward Ayers Pratt and Mary Anne Stratton. His grandfather on his father's side was Captain Joseph Pratt, of Shrews-

bury, Massachusetts, and on his mother's was Deacon Samuel Stratton, of Princeton, Massachusetts, a soldier in the war of 1812. After leaving the common schools of his native town he attended Wilbraham Academy, and later the Manual Labor Academy at Worcester, Massachusetts, where he fitted for college. Later he read law with Honorable Henry Chapman, of Worcester, Massachusetts, and was admitted to the bar in May, 1852. He entered at once upon the practice of law in Worcester, where he continued until 1859, when he came to New York City. When the civil war broke out Mr. Pratt raised the 31st New York volunteers, and went to the front as colonel. September 15, 1862, he was appointed brigadier-general of volunteers. He was engaged in the battles of Bull Run, West Point, Virginia, Gaines' Mills (where he was severely wounded in the head), South Mountain, Antietam and Fredericksburg, and in several skirmishes.

In 1865 he was made collector of internal revenue, and in 1870 he was elected judge of the Supreme Court of New York state from the 2d judicial district, which position he continued to hold until his death.



**RATT, BENJAMIN** (born in Cohasset, Massachusetts, March 13, 1710; died January 5, 1763), one of the colonial chief-justices, was of humble birth and was bred to a mechanical trade. Losing a limb at an early age, he devoted himself to study, was graduated at Harvard in 1737 (being the lowest in his class), and studied law in Boston with Robert Auchmuty, an eminent British barrister, whose sister he married. He became one of the prominent lawyers of Boston, noted for his learning and eloquence. November 11, 1761, he was commissioned chief-justice of New York by Colden, who at that time was advocate-general of Massachusetts, and he took office in January, 1762. He died while on a visit to England.

According to Judge Thomas Jones, Chief-Justice Pratt, during his brief service on the New York supreme bench, was "insulted, abused and lampooned through the artful insinuations and cunning, sly, dark designs of the republican faction of which the two Smiths, senior and junior, William Livingston, John Morin Scott, Robert R. Livingston, Peter Van Brugh Livingston, Philip Livingston and Thomas Smith were the principal leaders. He was opposed in every judicial act he did, plagued and harassed by the Smiths, Livingstons and Scott, the then leading gentlemen of the bar."



**RUYN, JOHN VAN SCHAICK LANSING** (born in Albany, New York, June 22, 1811; died in Clifton Springs, New York, November 21, 1877), was graduated at Albany Academy in 1826, and after studying law under the direction of James King was admitted to the bar (1832). As a young lawyer he attained peculiar prominence, and the annals of the state bar afford few in-



stances of similar rapid advance. One of his first professional engagements was as an attorney in the James will case, a very notable suit. At the age of twenty-four he was counsel for the Mohawk & Hudson Railroad, and one of its directors, and "in 1853, when the railroads between Albany and Buffalo were united, forming the present New York Central, he conducted the proceedings and drew up the consolidation agreement, in some respects the most important business instrument that was ever executed in the State of New York. He was associated in the Hudson river bridge case, finally arguing it alone, was the sole trustee of the estate of Harmanus Bleecker, and was the financial officer of the Sault Ste. Marie canal, which he carried through many difficulties." Mr. Pruyn was one of the principal citizens of Albany, and filled positions of high honor. As a capitol commissioner, he laid the corner-stone of the new state capitol in 1869. For thirty-three years he was regent of the State University, and for fifteen years its chancellor. The collections of the State Museum of Natural History and the State Library were largely enriched by his efforts. He was a trustee of the state board of charities, the state survey and the Albany Institute, a member of the association for the codification of the law of nations, and was connected with historical and other societies. He was elected a state senator in 1861, and served in congress from 1863 to 1869.



**RUYN, ROBERT HEWSON** (born in Albany, New York, February 4, 1815; died there, February 26, 1882), a cousin of the preceding, was graduated at Rutgers College in 1833, and admitted to the bar in 1835 after studying with Abraham Van Vechten. He held local and state offices; was corporation counsel of Albany, adjutant-general (1855), and member of the assembly from 1848 to 1850, and again in 1854, in which latter year he was speaker. He was sent by President Lincoln in 1861 as minister to Japan, and in that office he assumed responsibility for inaugurating naval operations against the daimio of Chosu, which, with the ultimate co-operation of Great Britain, France and Holland, had results of much importance for the promotion of commercial intercourse; and altogether the United States is greatly indebted to Minister Pruyn for the increasing favor extended to American trade in Japan. Returning to this country he devoted himself chiefly to financial interests, being president of the National Commercial Bank of Albany at the time of his death.



**RURSER, GEORGE H.** (born in England in 1810; died in New York City, June 21, 1889), came to this country at eighteen. He studied law, and was admitted to the bar in New York City while employed as a drug clerk. He was for forty years a member of the Tammany Society, successively secretary and vice-

president of the fire department, in 1850 commissioner of taxes, and in 1856 corporation attorney. He framed the bill appointing the state commission of immigration. In 1869, as attorney for the Mutual Life Insurance Company, he defeated the conspiracy, involving a New York judge, to throw the company into the hands of a receiver. He was president of the *Daily News* Publishing Company at the time of his death.



ADCLIFF, JACOB, was the eldest son of William Radcliff, a captain of militia at the beginning of the Revolution, who rose to the rank of brigadier-general. Jacob studied law, and began practice at Poughkeepsie. He was eminently successful, and while-still a young man was raised to the bench of the Supreme Court. Thereupon he took up his residence in New York City, but he eventually resigned from the bench and resumed the practice of law. In 1810 he was appointed mayor, holding the position one year; and again in 1815, 1816 and 1817 he was mayor of the city. The population of New York reached 100,000 during his mayoralty.



*Jacob Radcliff*



APALLO, CHARLES A. (born in New York City, September 15, 1823; died December 28, 1887), the eminent lawyer and late associate-justice of the Court of Appeals of the State of New York, was the son of Anthony Rapallo and Elizabeth Gould. The latter was sister of Hannah F. Gould, the poetess, and aunt through a brother and sister to Benjamin A. Gould, the noted astronomer, and to Chief-Justice Fuller of the United States Supreme Court. The father of the Gould family, Benjamin Gould, was engaged in the battle of Lexington, was an officer in the continental army, and was elected from Massachusetts to the first continental congress which signed originally the declaration of independence.

The elder Rapallo, a native of Italy, near Genoa, coming to this country early in life and settling in the City of New York, was a superior linguist as well as lawyer, and in addition to his practice often acted as a translator. He located in 1818 at 16 Vesey street, thence, as his practice grew, successively on Beekman, Church and

Nassau streets, and in 1843 at No. 4 (now No. 11) Wall street. For a number of years he and John Anthon had offices together. He personally directed the early education of his son, Charles, being his preceptor in classical studies and the modern languages, Italian, Spanish and French, in which the youth spoke with the same fluency as in English.

At the early age of fourteen years, by constant attendance at his father's office and special tuition, his legal studies had become fairly inaugurated. At the age of twenty-one, without having attended



CHARLES A. RAPALLO.

school or college, he was admitted to the New York bar. Remaining for a short time in the office of Jonathan Miller, counsel for the Astor estate, he in 1845, with Joseph Blunt, formed the partnership of Blunt & Rapallo. The firm were the attorneys of the Mutual Life Insurance Company during the first years of the organization of that company. In 1848 he formed the principal professional association of his life, with Horace Clark, at No. 65 Wall street. A high class of practice at once came to the firm. Among the early and notable cases in which Mr. Rapallo personally appeared were : *Donnelly vs. Corbett* (7 N. Y.),

involving the question of the validity of an insolvent discharge obtained in South Carolina as against a creditor who was a resident of New York, but who had obtained judgment against his debtor in the courts of South Carolina and there imprisoned him. Mr. Rapallo carried the case to the Court of Appeals and secured a reversal of the judgment of the Superior Court. In the case of the *Josephine*, running between New York and Monmouth county, New Jersey, attached under warrant of state attachment law, Mr. Rapallo produced a reversal of the judgment of general term on constitutional grounds. For the British Commercial Life Insurance Company, he overthrew the action of the commissioners of taxes and assessments, who had assessed the company on \$50,000 United States bonds and \$50,000 Buffalo city bonds, the United States bonds being held to be exempt. This was the first case in which the point had been taken. Gillespie *vs.* Torrence, relating to commercial paper; Hasbrouck *vs.* Hasbrouck, growing out of the administration of a will; Hayes *vs.* Heyer, involving the position of a special partner; Hoxie *vs.* Allen, brought by Joseph Hoxie to recover for services from a steamship line, are cases in which Mr. Rapallo made the arguments in the highest court.

Mr. Rapallo, acting for his firm as attorney for Cornelius Vanderbilt, made the arguments in the cases of *Quimby vs. Vanderbilt* and *Williams vs. Vanderbilt*, actions brought to hold the commodore liable for delinquencies of a co-operating company. He also argued for Mr. Vanderbilt in the Court of Appeals, in connection with Charles O'Connor, the case of the New York & New Haven Railroad Company *vs.* Scuyler, growing out of the great Scuyler frauds, which occupied the attention of the court for many years (34 N. Y.).

In 1867, Mr. Clark retiring from practice, Judge Rapallo formed a partnership with James C. Spencer, under the firm name of Rapallo & Spencer. In the autumn of the same year the great Erie controversy commenced, and during the early months of 1868 Mr. Rapallo was engaged in some of the most complicated and extensive legal proceedings that have been known in the history of our courts. Mr. Rapallo had the general direction of this litigation, although several distinguished counsel were associated with him. His professional life was occupied almost exclusively with business in the civil courts, and though his practice was a varied one, he was employed mainly in matters relating to estates, trusts, corporations, testamentary and commercial law, in all of which he gained an experience that fitted him for the position he was soon called upon to fill.

He had held aloof from office, though as a voter he was registered with the democrats. In 1870 the election of a chief-judge and six associate-judges of the Court of Appeals took place under the amended constitution providing for a court of seven prominent judges, and requiring that each elector should vote only for four associate-judges, that giving both parties a representative. Mr. Rapallo, who was



nominated by the democrats as one of the four associate-judges, was elected, with the other three, by an average majority of 85,023 votes. In this high position the judicial faculty of Judge Rapallo was at once brought into prominence. His learning and acuteness appear from the record of leading opinions in which he has summed up the reasons of the court for reversing the judgment of lower tribunals. Prominent among these cases are : *Manice vs. Manice* (43 N. Y. R.), involving almost every question that can arise under the revised statutes in relation to the suspension of the power of alienation of real estate ; *Clark vs. Sheehan*, a question of usury ; *Harris vs. Frink*, involving title to crops under parole contract ; *Hemman vs. Heard* ; *Reed vs. Gannon* ; *Menagh vs. Whitwell* ; *Baker vs. Drake* ; *Filton vs. Bucker* ; *Woodgate vs. Fleet* ; *McDonald vs. Mallory* ; *People vs. Scuyler* ; *Young vs. Young*, and many others, contained in fifty-seven volumes of reports, the opinions embracing a wide range of legal principles and characterized by largeness and breadth of judicial view.

In 1884 Judge Rapallo was re-elected, for the term of fourteen years, associate-judge, by substantially the unanimous vote of both parties, having been in the meantime (1880) the choice of his own party at the State convention for the chief-judgeship. He continued his judicial labors, however, scarcely three years from his re-election, succumbing to fatal illness December 28, 1887, and leaving but a single survivor (Judge Charles Andrews) of the original seven judges elected to constitute the Court of Appeals in 1870.

The tributes to his memory were sincere and universal. Judge Charles Andrews, who prepared and read the memorial before the Court of Appeals, which adjourned immediately thereafter, said in part :

In the combination of qualities which fit a man to be a judge, Judge Rapallo had few if any superiors. He possessed intellectual gifts of a high order, absolute integrity of purpose, a calm and dispassionate temper, great good sense, a solid judgment, and these, united with adequate learning and power of philosophical analysis, constituted him, as I think, one of the first judges of our time.

January 20, 1888, after the opening of the court, the Honorable Antasa J. Parker presented resolutions adopted at a meeting of the Albany bar, with eulogistic remarks, which by order of court were entered on the minutes. A minute and resolutions of the Kings county bar were also presented by William P. Davenport, and entered upon the minutes. February 28, 1888, Honorable William Allen Butler, on behalf of the New York State Bar Association, presented a tribute and resolutions, which were ordered entered on the minutes of the court. A memorial prepared by Stephen P. Nash in accordance with a resolution of the Association of the Bar of the City of New York at a stated meeting, held March 13, 1888, was also presented to the court, and became a part of the minutes of the memorial proceed-

ings in reference to the death of Judge Rapallo. A paragraph in this memorial says :

From the time he took his seat in the Court of Appeals in July, 1870, till his last illness, some seventeen years, his life was one of continuous and faithful devotion to the duties of his office. Elevated to a seat in the highest court of the state, and this an appellate court, sitting only in review of decisions of subordinate tribunals, without having had any previous judicial experience, his immediate success in disarming criticism and winning general confidence is proof that he had the mental endowments, the sound learning and integrity of character essential to the making of a great judge.

Judge Rapallo married in early life Helen, daughter of Bradford Sumner, of Boston, Massachusetts. His widow, two sons and four daughters survived him.



EYNOLDS, JOHN H. (born in Saratoga county, New York, in 1819; died in Kinderhook, New York, September 24, 1875), received an academic education and was admitted to the bar in 1843. He was for a time postmaster at Albany, and was a member of congress. He was appointed to the Commission of Appeals in 1873, and as a member of that body he wrote some most able, ingenious and striking opinions, which attracted much attention from the bar of the whole country. His associates on the Appeals Commission were Lott, Gray, Earl and Dwight.

His opinion in the case of *Appleby vs. Astor Insurance Company*, 54 New York Reports, 253, may be cited as a specimen. It is there held that upon an undisputed state of facts the court may render the judgment which the law requires, without the aid of a jury. This is his terse statement of the case: "I am of the opinion that upon the undisputed facts, under the provisions of the policy, the plaintiffs were not entitled to recover, and that a verdict should have been directed for the defendant. The terms of the contract between the parties must control the result; and if unambiguous, neither courts nor juries can alter or modify its provisions or in effect make a new one." The position thus outlined he maintains in an able opinion in the case of *Algur vs. Gardner*, 54 New York Reports, 360, where he holds that it is error for a judge to submit a question to a jury if there is no evidence to authorize any finding thereon. In *Savage vs. Allen*, 54 New York Reports, 458, involving the question how far equitable defence can be used as a basis for an injunction suit, he says: "The proposition that a separate action may, under our present system, be maintained to restrain by injunction the proceedings in another suit, in the same or in another court, between the same parties, where the relief sought in the later suit may be obtained by a proper defence to the former one, has long since been exploded, or, if not, should be without delay." He was especially strong in dealing with questions of procedure and in construing the code of procedure.



REYNOLDS, MARCUS T. (born in Florida, Montgomery county, New York, December 22, 1778; died in Albany January 13, 1864), was educated at Canajoharie Academy and at Union College, being graduated from the latter institution in 1808 second in his class. He immediately commenced the study of the law in the office of Attorney-General M. B. Hildreth, at Johnstown, New York, and he was called to the bar in 1811, beginning practice in Johnstown, where he soon ranked as one of the best lawyers, although the Johnstown bar at that period was adorned by many brilliant and distinguished men. In 1828 he removed to Albany. There he became one of the chief practitioners in the Supreme Court and Court for the Correction of Errors, being for thirty-five years counsel in the most important suits adjudicated in those tribunals. He was equally effective in suits involving close and passionless reasoning, like that of *Mabee vs. Peck*, which was confined to abstract questions of law, and in cases calling for more animated qualities, like the celebrated Lamprey murder case. In his latter years he conducted his causes sitting, having had one of his legs amputated in consequence of injuries sustained in a fall.

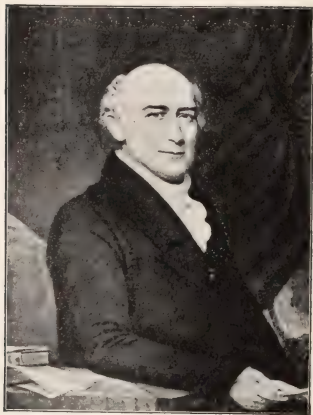
He never sought or held public office, and on one occasion manifested in a peremptory manner his distaste for political preferment. In 1831 a delegation waited upon him to tender him the nomination for congress for the Albany district, but he declined it.



RICHARDSON, JOSEPH L. (born in Tawneytown, Maryland, June 5, 1777; died in Auburn, New York, April 15, 1853), removed to Cayuga county, New York, at an early age and settled in Aurora, where he read law with Walter Wood, who subsequently became first judge of Cayuga county. He was admitted to the bar in 1802. In 1815 he was appointed by Governor Tompkins district-attorney for the 9th district, embracing the counties of Cayuga, Cortland, Chenango, Madison and Onondaga. He filled this office with great ability, distinguishing himself specially by obtaining the conviction of Bishop for highway robbery in a difficult case. In 1818, upon the discontinuance of the old district system, he became prosecuting attorney for Cayuga county, continuing in that office until 1821. He was appointed by Governor De Witt Clinton in 1827 first judge of the Cayuga Court of Common Pleas, and he served on that bench for nineteen years. His official career, as public prosecutor and judge, covered a period of thirty-one years and was characterized throughout by faithful and efficient performance of duty.



RIKER, RICHARD (born in Newtown, Queens county, New York, September 9, 1773; died in New York City, September 26, 1842), was the son of Samuel Riker<sup>1</sup> and Anna Lawrence. Receiving a good preliminary education under the tuition of Dr. Witherspoon at Nassau Hall, New Jersey, he entered the law office of the elder Jones and was admitted to the bar in 1795. He became district-attorney of New York in 1801, holding that office continuously to 1813, with the exception of a single year from February, 1810, to February, 1811. In 1815 he was appointed recorder of the city. He served as recorder, with one or two short intermissions, until 1838. He then resigned on account of ill health, retiring to his country seat on the Hudson near the present Seventy-fifth street, where a few years subsequently he died.



A recent writer, speaking of his professional and personal characteristics, says :

He was an excellent magistrate, learned in the criminal law, of wide experience, of unwearied patience, of good nature and keen sympathies. . . . He was a gentleman of the old school—of the curled and ruffled Corinthian order—at a period when there was time for dignity, deliberation and courtesy. . . . Compared with Livingston, Jones, Kent and Ogden Hoffman, his abilities were not shining, and yet in the provincial town in which he flourished he made a prominent figure, respected and beloved by all.<sup>2</sup>

In 1802 Mr. Riker acted as second for De Witt Clinton in a duel with Colonel John Swartwout. In 1803 he had a meeting with Robert Swartwout, a brother of the colonel, and was severely wounded in the right leg. He was in consequence confined to his house for seven months. But he was not more conspicuous for his courage than for his courtesy and engaging manners. It is related of him that Mr. John Van Wyck, who bore Mr. Swartwout's challenge, was so favorably impressed by Mr. Riker during the interview that he returned to his principal and declined to serve as his second.

Mr. Riker's political opponents sought to prosecute him for the offence of fighting a duel, but Hamilton, who was his intimate friend

<sup>1</sup> Samuel Riker fought in the revolutionary war, and his brother Andrew commanded the *Saratoga* and the *Yorktown* in the war of 1812. One of his sisters married Dr. Macnevin, of New York, and another, Thomas Addis

Emmet. He was a member of the state legislature in 1784, and of the 8th and 10 congresses, in 1803 and 1809, respectively.

<sup>2</sup> Irving Browne, in the *Green Bag*, April, 1896.



and a frequent visitor at his house on Wall street, successfully interposed in his behalf. His early devotion to "the code," at a period when duelling had not given place to the code of procedure, was strikingly modified by his subsequent words as magistrate in the case of Jacob Barker, indicted for sending a challenge to fight a duel (7 Wheeler Criminal Cases, 19). The jury convicted the accused, and the recorder in passing sentence said: "We feel constrained also to pronounce one word of reprobation on the direful practice of duelling, to which the defendant himself assented in his argument. It is a practice most abhorrent to reason, to humanity and to religion. By it many of our best citizens have been destroyed—many a worthy family rendered miserable. We are bound by every sanction to lend our aid to extinguish it."

He was distinguished, in connection with his legal attainments, for his wit and polished manners; and his prominence in official position made him the mark for a satirical but pleasant poem, entitled "The Recorder," by Halleck—one of the "Croakers" series, published previously to 1828.

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ROBERTSON, ANTHONY LISPENARD (born in New York City, June 8, 1808; died there, December 18, 1868), after his graduation from Columbia College in 1825 studied for the legal profession and in due time was admitted to practice.

He promptly gained high standing in the profession and for much of his life was occupied in important judicial employments, being successively vice-chancellor (1846–48), surrogate of New York City (1848), and judge of the Superior Court of the City of New York (elected in 1859 and re-elected in 1864), of which he became chief-justice in 1866. He was a prominent member of the state constitutional convention of 1867.

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ROBINSON, EDMUND RANDOLPH (born in Philadelphia, March 5, 1838; died in New York City, July 24, 1896), was graduated from the University of Pennsylvania in the class of 1855 and from Harvard in the class of 1856. He was ad-

mitted to the bar, engaged in practice in the City of New York, and from a very early period in his career enjoyed important and remunerative employments. For twenty-five years he served the Pennsylvania Railroad Company as counsel. He was one of the committee of those appointed to call the meeting at which the Association of the Bar was organized, and was among the most active of the young men who took part in the proceedings which resulted in the impeachment of the corrupt judges.

Mr. Robinson was one of the most esteemed members of the New York bar, highly respected by the profession alike for his abilities and his character.



ROBINSON, HAMILTON W. (born in Albany, New York, November 25, 1814; died in New York City, April 7, 1879), was graduated at Union College in 1832, studied law in the office of McCown and Van Buren, and upon his admission to the bar became a partner of Mr. Van Buren ("Prince John"). The latter, when appointed attorney-general, made him his deputy. In 1848 the firm was removed to New York City, where, during the ten years of its continuance, it was very prominent and successful. Mr. Robinson gave particular attention to the law of corporations and municipalities. After discontinuing his partnership with Mr. Van Buren he practiced alone for several years. He was associated with Charles O'Connor in the famous railroad cases which resulted in the notable decision in *People vs. Kerr*, by which the Seventh avenue, Broadway, and Dry Dock railways were enabled to construct their lines. Among his clients were George Law and John Kerr, the railroad magnates. In 1863 he organized with John M. Scribner the firm of Robinson & Scribner. He acted as referee in numerous cases of great importance.

In 1870 he declined the democratic nomination for the bench of the Court of Appeals in favor of his friend, Charles A. Rapallo. In the same year he was elected a judge of the Court of Common Pleas, a position which he occupied until his death. His decisions are conspicuous for fairness and accuracy, displaying exhaustive and patient study of the merits of cases. A commemorative tablet in his honor has been placed in the general-term room of the Court of Common Pleas in the county court-house.<sup>1</sup>



ROBINSON, LUCIUS (born in Windham, Greene county, New York, November 4, 1810), received an academic education at Delhi, New York, pursued legal studies, and being admitted to the bar began practice in 1832. He was appointed district-attorney, and in 1843 and again in 1845 was appointed master of chancery in the City of New York. He was affiliated with the democratic organization until 1855, and then joined the republican party, being elected in 1859 to the assembly and in 1861 and 1863 to the office of state comptroller. Returning to the democratic party he was renominated for comptroller in 1865, but was defeated. He was a member of the constitutional commission of 1871-72, was once more chosen comptroller in 1875, and in 1877 was elected governor of New York as the candidate of the democratic party. In this office some of his acts, especially his removal of County Clerk Gumbleton, of New York, upon charges preferred by the Association of the Bar, were highly displeasing to the Tammany

<sup>1</sup> This sketch has been condensed from a biography in the "History of the Court of Common Pleas of the City and County of New York," by James Wilton Brooks (1896).

faction, and, upon his renomination for governor in 1879 by the Democratic state convention, that faction organized a bolt and ran John Kelly as an opposing democratic candidate. The defection caused his defeat, although the rest of the democratic state ticket was successful.



OELKER, BERNARD (born in Osnabrück, Hanover, Germany, April 24, 1816; died in New York City, March 5, 1888), emigrated to America in 1835 and for a number of

years taught private pupils in New York City. He began the study of law in 1838 in the office of Theodore Sedgwick, but soon afterward was called to Harvard University as an instructor in the German language. While teaching in that institution he took the three-years' course in the law school. He remained at Harvard for eighteen years, during which he published various works—text-books, translations, etc. He was on familiar terms with the distinguished New England literary characters of the period. Returning to New York in 1856, he was admitted to practice on the motion of William M. Evarts, and until his death he was prominent at the metropolitan bar. His clients were chiefly German merchants, and on their behalf he gave special attention to commercial, international and continental law, the law relating to corporations, and particularly to the common and statute law concerning wills and testaments.



ROOSEVELT, JAMES JOHN (born in New York City, December 14, 1795; died there, April 5, 1875), an uncle of Robert B. Roosevelt and grand-uncle of the present Theodore Roosevelt, was admitted to the bar of New York City in 1818,

having graduated from Columbia College in 1815. He entered into a legal copartnership with Peter Jay, and took a leading place in his profession and in politics. He was a conspicuous supporter of Andrew Jackson's presidential candidacy in 1828. Retiring temporarily, he visited Europe, and was a witness of the stirring events that attended the French revolution of July, 1830. Upon his return he again devoted himself to law and politics, and sat in the legislature (1835 and 1839-40) and in congress (1841-43). Afterward he took another foreign trip, during which he made a study of English, French and Dutch law and practice. He was elected in 1851 a justice of the State Supreme Court, and for a part of his term was a member of the Court of Appeals. Having been appointed United States district-attorney for the southern district of New York, he resigned his judicial position in 1859; but he served only one year in his new office.



ROOSEVELT ARMS.



OOT, ERASTUS (born in Hebron, Connecticut, March 16, 1773; died in New York City, December 24, 1846), was graduated at Dartmouth College in 1793 and began the practice of the law in Delhi, New York, in 1796. He enjoyed professional success, and was very active politically as an energetic and able leader of the George Clinton school. His "Addresses to the People," published in 1824, are a valuable illustration of the controversies of those early times. He held the offices of member of the legislature for very many years, representative in congress (1803-5, 1809-15 and 1831-33), lieutenant-governor (1820-22), state senator (1840-44), and major-general of the New York militia.



UGER, WILLIAM CRAWFORD (born in Bridgewater, Oneida county, New York, January 30, 1824; died in Syracuse, New York, January 14, 1892), was the son of John Ruger, a hard-working lawyer. He received an academic education, began the study of law as a clerk in his father's office, and was admitted to the bar in Utica, in 1853. He opened an office in Bridgewater and continued there until 1853, when he removed to Syracuse. In that city he practiced until his elevation to the bench. He soon ranked as one of the ablest members of the Onondaga bar, being noted as a shrewd, practical and efficient lawyer rather than a brilliant orator. In the conduct of his cases he excelled especially in clearness of statement, methodical arrangement of facts and logical and earnest reasoning. Among the important suits in which he was counsel were the Lindsley murder trial, the suits connected with the Jaycox & Green and People's Savings Bank bankruptcy, and the canal suits instituted by Governor Tilden. In all of these he was successful.

Identified with the democratic party, he was a delegate to the "hard-shell" conventions held at Rome and Syracuse in 1849. He was an unsuccessful candidate for congress in 1864 and 1866. In 1872 he was one of the old-line democrats who supported Charles O'Connor for the presidency.

He was elected judge of the Court of Appeals in 1882 and became its fourth chief-judge. His opinions are characterized by great impartiality and dispassionateness. He was always reluctant to dissent, manifesting a decided love of precedent.

He was the first president of the Onondaga Bar Association, and one of the organizers of the State Bar Association.



UGGLES, CHARLES HERMAN (born in Litchfield county, Connecticut, February 10, 1789; died in Poughkeepsie, New York, June 16, 1865), a son of Samuel Bulkeley Ruggles (q. v.), entered upon the practice of the law at Kingston, after completing his general and professional studies. He served in



the assembly in 1820 and in congress from 1821 to 1823. Having attained considerable professional prominence, he was placed on the circuit bench of Dutchess county, where he made a reputation as a jurist. After leaving this office he was again sent to the legislature. He sat on the bench of the Court of Appeals from 1851 until his resignation in August, 1855. He was a delegate to the constitutional convention of 1846.



**RUGGLES, SAMUEL BULKELEY** (born in New Milford, Connecticut, April 11, 1800; died on Fire Island, New York, August 28, 1881), was a son of Philo Ruggles,<sup>1</sup> under whose direction he studied law after his graduation from Yale College in 1814, being admitted to the bar in 1821. After practicing with much success for some years, he turned his attention to public pursuits, and, being chosen to the assembly in 1838, become chairman of the ways and means committee of that body, in which capacity he rendered a memorable "Report upon the Finances and Internal Improvements of the State of New York." The recommendations of this report became the basis for subsequent policy in the enlargement of the Erie canal. "He was a commissioner to determine the route of the Erie railroad, and a director in 1833-39, a director and promoter of the Bank of Commerce in 1839, commissioner of the Croton aqueduct in 1842, delegate from the United State to the international statistical congresses at Berlin in 1863 and the Hague in 1869, United States commissioner to the Paris exhibition of 1867, and delegate to the international monetary congress that was held there. . . . Mr. Ruggles' claim to distinction rests chiefly upon his canal policy, and the steadfast attention that he continued to give to the Erie canal, both as a private citizen during his life and as canal commissioner, in which office he served from 1840 till 1842, and again in the year 1858."<sup>2</sup>

He was a prominent citizen of New York City; he laid out Gramercy park, presenting it to the surrounding property owners (1831), and was instrumental in the shaping of Union square. He was identified with Columbia College, the Astor Library, the state chamber of commerce and the general convention of the protestant episcopal church. He wrote many papers on public and social topics.



**RUNKLE, CORNELIUS A.** (born in Montgomery county, New York, December 9, 1832; died in New York City, March 19, 1888), was a brother of Professor John Runkle, the mathematician, and husband of Lucia A. Runkle, the writer. He was a graduate of Harvard Law School (1855), and after practicing for a while in New York City was placed in charge of the law division of

<sup>1</sup> Philo Ruggles was a leading lawyer of Poughkeepsie, being surrogate and district-attorney there.

<sup>2</sup> Appleton's "Cyclopaedia of American Biography."

the custom-house as deputy collector. Retiring from that office, he devoted himself professionally to litigations arising under the tariff and internal revenue laws. He was counsel for the *Tribune* association for a quarter of a century.



AMPSON, WILLIAM (born in Londonderry, Ireland, January 17, 1764; died in New York, December 27, 1836), was educated at Dublin University, became a barrister, and frequently acted as counsel for members of the Society of United Irishmen. Upon the failure of the rebellion of 1798 he fled, but was brought back to Dublin, tried for complicity, and released upon the condition that he would go to Portugal. He was imprisoned in that country at the instance of the English government. He escaped to France, returned to England, and defied the authorities, but was allowed to depart to this country. He established himself in New York City in 1806, and built up a considerable practice. Through his writings he exercised a large influence in bringing about amendments and codification of the laws of the state. In 1825 he removed to Georgetown, District of Columbia. "More than one hundred of the most eminent lawyers and judges of New York united in a letter of regret at his removal, with a strong expression of their respect for his attainments, genius and virtues." Governor De Witt Clinton and Chancellor Kent sent him special letters of regard. He published "Memoirs of William Sampson" (New York, 1807, and London, 1832), "The Catholic Question in America" (1813), "Discourse before the New York Historical Society on the Common Law" (1824), "Discourse and Correspondence with Learned Jesuits upon the History of the Law" (1826), and "History of Ireland" (1833). An appreciative article upon his addresses and writings, with an account of the part he played in the first movement toward codification, and an extended review of the case of the "Journeymen Cordwainers of the City of New York," in which he appeared for the defence, may be found in the August number of the *Green Bag*, 1896.



ANDFORD, CHARLES W. (born in Newark, New Jersey, May 5, 1796; died in Avon Springs, Livingston county, New York, July 25, 1878), studied in the law office of Ogden Hoffman, of New York City, and after his admission to the bar practiced continuously in that city during a long professional career. He was counsel in many notable railroad cases, particularly in connection with the Harlem Railroad, of which he was counsel for a score of years. At an early period he attempted the rôle of theatre manager, but abandoned it after two theatres had been burned.

Outside his profession he achieved military distinction. In the militia of New York he rose from a private to the command of the 1st

division of the state, and was in command on the occasions of the Astor place riot, Flour riot, Street Preachers' riot, and Draft riot—historic disturbances in the streets of the metropolis. He had been in command of the militia of the City of New York for more than thirty years when retired by Governor Fenton in 1867. One of the volunteers answering Lincoln's first call at the commencement of the civil war, he was in command at Harper's Ferry while the famous battle at Bull Run was in progress.

He was a vice-president of the City Bar Association.

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ANDFORD, EDWARD (born in Ovid, New York, September 22, 1809; died at sea, in the ill-fated steamship *Arctic*, September 17, 1854), after receiving an ordinary education, became a teacher and lecturer at Albany, New York, studied law, and was admitted to the bar in 1833. He began practice in New York City, where in 1842 he received an appointment to the bench of the Criminal Court. In 1843 he was a member of the state senate. He eventually achieved a high position in the practice of law in the City of New York.

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ANDFORD, LEWIS HALSEY (born in Ovid, New York, June 8, 1807; died in Toledo, Ohio, July 27, 1852), a brother of the preceding, was admitted to the bar in 1828, his law studies having been pursued at Syracuse. In 1833 he removed to New York City. In March, 1843, he was appointed assistant vice-chancellor of the 1st circuit, and in 1846 vice-chancellor. The next year he became a justice of the Superior Court of the City of New York, and continued upon this bench until his death. He was considered one of the ablest judges. He compiled or edited many volumes of reports. These include four volumes of the "New York Chancery Reports" (1846-50), and the "New York Superior Court Reports" (1849-52).

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ANFORD, CHARLES F. (born in New Haven, Connecticut, in 1827; died in New York City, October 21, 1881), was the son of a prominent merchant, and was descended from old Puritan stock. He entered Yale College at sixteen, graduating in due course with honors. He afterward took the elementary law course of the Yale Law School, and in the spring of 1849 entered the law office of Butler & Evarts, of New York City. In 1852 he began practice for himself. He was associated at different times with Henry Brace, Lewis B. and Charles H. Woodruff, and later with Charles H. Woodruff and E. Randolph Robinson, under the firm name of Sanford, Robinson & Woodruff. Although an attractive speaker, his diffident disposition prevented his appearance in criminal cases, but he

ranked high as an office lawyer and attained marked success. The De Forest-Manill case, involving over \$2,000,000, and the suit against the Camden & Amboy Railroad Company, involving nearly \$500,000, were cases in which he conspicuously displayed his legal talents. In the fall of 1875 he was elected judge of the Superior Court of New York City. As judge he was distinguished by the care, patience and ability with which he did his work. He died in office, after a protracted illness that for more than two years had interfered with the performance of his judicial duties.

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ANFORD, NATHAN (born in Bridgehampton, Suffolk county, New York, November 5, 1777; died in Flushing, New York, October 17, 1838), was admitted to the New York bar in 1799, after attending Yale College and studying law. He began the practice of law in New York City, but was soon occupied with public affairs, his political life continuing to eclipse his professional career to the end except during the periods from 1803 to 1816 and from 1821 to 1825, when his public service was in the line of his profession,—in the first instance as United States attorney, and in the second as chancellor of the state, succeeding Kent. President Jefferson appointed him United States commissioner in bankruptcy while he was United States district-attorney. In his official capacity he had charge of many important cases connected with the international difficulties with France and England and the war of 1812. He served two terms in the assembly, being for one year speaker, and also was for three years a member of the state senate. From 1815 to 1821, and from 1826 to 1831, he was a senator of the United States. He was one of the most active members of the state constitutional convention of 1821.

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AVAGE, JOHN (born in New York, in 1779; died in Utica, New York, October 19, 1863), was graduated in 1799 at Union College, and took a high rank at the bar not long after his admission. He filled many public offices—was a member of the assembly and congress, state comptroller, United States district-attorney, United States assistant-treasurer in New York, and a presidential elector on the Polk ticket.

On January 29, 1823, he was appointed chief-justice of the Supreme Court of the state, and he occupied that position until 1836, resigning to accept the place of clerk of the court at Utica, to which he was appointed by his associates. His resignation was due to the inadequacy of the compensation then paid the judges of the state.

Chief-Justice Savage's opinions are reported in Cowen's and the first fifteen volumes of Wendell's Reports. They are classed with the



ablest of American judicial opinions, being equally distinguished for sound reasoning and profound learning. He uniformly gave most scrupulous attention not only to principles but also to approved authorities, and seemed to take pride in going back to the year-books and old horn-books of the law.



**SCHOONMAKER, AUGUSTUS**, born in Ulster county, New York, March 2, 1828; died in that county, April 11, 1894), was educated in the common schools, taught school and studied law. He was admitted to practice in 1853, locating at Kingston. Closely applying himself, he rose to high rank among the prominent members of the Ulster county bar. In 1863 he was elected judge of the county, and he was re-elected in 1867. In 1875 he represented Greene and Ulster counties in the state senate, and in 1877 became attorney-general of the state.



**SCOTT, JOHN MORIN** (born in New York City, in 1750; died there, September 4, 1784), was of distinguished ancestry.<sup>1</sup> He played a prominent part in New York City in connection with the revolutionary war. He was one of three leading lawyers (William Smith, Junior, and William Livingston being the others), who according to the bitter partisan historian Jones, having been so unfortunate as to be educated at Yale College—"a college remarkable for its persecuting spirit, its republican principles, its intolerance in religion, and its utter aversion to bishops and all earthly kings,"—and having further been degenerated along these lines by all studying together in the office of the William Smith, Senior, "formed themselves into a triumvirate and determined, if possible, to pull down church and state, to raise their own government and religion upon its ruins, or to throw the whole province into anarchy and confusion."

He was one of the founders of the sons of liberty, and his influence in arousing a spirit of independence, through speeches and newspaper articles, was very great in New York. He was a member of the continental congress of 1775; of the New York committee of safety of 1776; the provincial congress of 1776; was a brigadier-general in the Revolution (participating in the battle of Long Island) until March, 1777; became secretary of state of New York in the latter year; was a member of Congress between 1780 and 1783, and was again secretary of state of New York in 1784, holding the office at the time of his death.

<sup>1</sup> He was the great-great-grandson of Sir John Scott, baronet, of Ancrum, Scotland. His grandfather, John Scott—Sir John's grandson through his second son,—

came to the province of New York about 1702. He at one time commanded Fort Hunter, a stronghold on the Mohawk river.



**SCUDDER, HENRY J.** (born at Northport, Long Island, September 18, 1825; died in New York City, February 10, 1886), attended Huntington Academy, was graduated from Trinity College in 1846, studied law with William Curtis Noyes, and was admitted to the New York bar in 1848. Practicing his profession in connection with Judge Henry E. Davies prior to 1854, in the latter year he formed a partnership with James C. Carter, which continued until his death. This association was thus one of the oldest, as it was one of the most notable, of the legal partnerships of New York City during the period covered by it.

Mr. Scudder rose to one of the leading places at the bar. He was a learned lawyer, a generous adversary, an eloquent and powerful advocate, and possessed such veneration for the law that its just interpretation was of much greater concern to him than mere case-winning. He enjoyed the confidence of his professional brethren in a remarkable degree, and was frequently selected as referee in cases of great moment. His opinions in marine insurance matters, to which he gave much attention, were considered authoritative. A founder of the Bar Association of the City of New York, he was one of its vice-presidents and a member of its executive committee.

Mr. Scudder, with two exceptions, refused all invitations to contest for political honors. He once consented to the use of his name by his party for the office of judge of the Superior Court of New York City, but without the least probability of election. He represented the 1st congressional district of New York in the 43d congress, but refused a renomination.



**SELDEN, HENRY ROGERS** (born in Lyme, New London county, Connecticut, October 14, 1805; died in Rochester, New York, in September, 1885), was a son of Joseph Selden, and belonged to a branch of the family that for two centuries had been prominent in the Connecticut valley. He was educated at the local institutions of his native town, and pursued his legal studies in the office of Gardner & Selden in Rochester. He was admitted to the bar in Utica in 1830, and immediately commenced practice in Clarkson, on the western border of Monroe county. In 1851 he received the appointment of reporter of the Court of Appeals, and he edited the New York Reports from the fifth to the tenth volumes, inclusive. He also edited "Selden's Notes of Cases in the Court of Appeals," covering the same period. He resigned on account of ill-health in 1854. In 1856 he was elected lieutenant-governor of the state on the republican ticket.

In 1862 Governor Morgan appointed him to the Court of Appeals in place of his brother, Judge Samuel L. Selden, who had resigned; and though entitled under the constitution, as the judge having the shortest time to serve, to preside over the court, he declined, insisting

that Judge Denio, the next in order of succession, should assume the duties of the position. By popular vote in the next election he was continued on the bench. His decisions are recorded in volumes 25 to 31, inclusive, of the New York Reports. In January, 1865, he resigned. The next winter he was elected to the assembly from Monroe county.

His subsequent practice at Rochester, whither he had removed in 1859, was large and important. A case of notoriety throughout the state was his appearance before Judge Hull in the United States District Court at Albany in 1873, in behalf of Susan B. Anthony, who had been arrested, charged with illegally voting at the presidential election of 1872. He was one of the signers of the call for the convention of 1872 which nominated Horace Greeley for president. In 1879, owing to ill-health, he relinquished his profession and retired to quiet life in Rochester. In 1858 Yale conferred upon him the degree of LL.D.



SELDEN, SAMUEL LEE (born in Lyme, New London county, Connecticut, October 12, 1800; died in Rochester, New York, September 20, 1876), elder brother of the preceding, was educated in the local schools and academies of New England, studied law at Rochesterville, New York, with his brother-in-law, Joseph Spencer, and in 1825 was admitted to the bar at Rochester. He was immediately received into partnership with Addison Gardiner, and soon was occupied with most important business. In 1830 he was chosen clerk of the board of trustees of Rochester. Having previously shown judicial ability as justice of the peace, in February, 1831, he was elected first judge of the Court of Common Pleas for Monroe county. After leaving that bench he was for many years clerk of the 8th Chancery Circuit of New York state. In 1847, at the first election under the constitution of 1846, he was chosen to the Supreme Court as a democrat. As judge he exerted a marked influence in construing the new code of procedure, and reducing the new practice to consistency and uniformity. He remained a member of the Supreme Court until 1856, when he was elevated to the Court of Appeals. He took a prominent part in the decisions of that tribunal, especially those relating to the law of corporations, determining their powers, liabilities and duties. The fifteen volumes of the New York Reports, commencing with Volume x., contain his contributions to the judicial records of the highest court. It is a singular circumstance that Mr. Selden was elected to both the Supreme Court and Court of Appeals before he had appeared at the bar of either. Overpowered by domestic bereavements, in 1862 he resigned from the bench.

Judge Selden was one of the original promoters of the electric telegraph system, and with others contributed the means for the construction of the first section of the line under the Morse patent, con-

necting the seaboard with the western states, and for fifteen years was a prominent factor in placing the telegraph business on a permanent and successful basis. The degree of LL.D. was conferred upon him by the University of Rochester in 1856.



SEWARD, WILLIAM HENRY (born in Florida, Orange county, New York, May 16, 1801; died in Auburn, New York, October 10, 1872), was the son of Doctor Samuel S. Seward, who was both a practicing physician and a merchant.<sup>1</sup>

He attended Farmers' Hall Academy at Goshen, New York, and Union College from 1816 to 1819, interrupting his course at the latter for a year, mainly spent in teaching in the south, and returning was graduated from Union in 1820. His law studies were prosecuted with John Anthon, of New York City, and Ogden Hoffman and John Duer, of Goshen, New York. Admitted to the bar at Utica in 1822, the following year he began practice at Auburn, New York, in partnership with Honorable Elijah Miller, whose daughter became his wife.

Mr. Seward soon won recognition at the bar of Cayuga county, at the same time taking an active part in politics. From the beginning of his career he was a vigorous opponent of the democratic party. After a brief association with the anti-masonic agitators he became one of the leaders of the whigs. He was elected to the state senate in 1830, and re-elected, greatly distinguishing himself in that body. In 1834 he was the whig candidate for governor, but he was defeated by Marcy. This early period of his public life was closed by his return to the practice of law in 1835.

He was elected governor in 1838 and again in 1840. Among the measures of policy which he favored during his incumbency of that office were the abolition of the Court of Chancery and the establishing of an elective judiciary system, schemes which, though not popular at the time, were subsequently adopted.

Between 1843 and 1849, after his retirement from the governorship, occurred Mr. Seward's most brilliant work as a lawyer purely, and he showed that the state could boast few who could equal him either for powerful advocacy or in the profound understanding and able presentation of the fundamental principles of the law. He distinguished himself in the intricacies of patent law and in the trial of notable criminal cases. Undoubtedly several of these famous suits had a determining influence upon his subsequent life, bringing him forward as an opponent of the institution of slavery, courageous in championing his convictions. Even threats of violence did not deter him in 1846 from the defence of the negro Freeman, who had horribly butchered a white family at Auburn, and his eloquent demonstration of a case of insanity

<sup>1</sup> Mr. Seward was of Welsh descent on his father's side and of Irish ancestry through his mother. The founder of the family in this country was a Welsh colonist in Connecticut.



has long been considered one of the most brilliant examples of such special pleading. In 1847 he ably defended John Van Zandt in a criminal prosecution for assisting in the escape of certain fugitive slaves. In his defence of Horace Greeley in 1845, in the libel suit against the celebrated editor by J. Fenimore Cooper, Mr. Seward delivered a characteristic and most eloquent plea in behalf of the freedom of the press.

From 1849 until his final retirement from active life Mr. Seward was constantly in the public service, being United States senator from New York for two terms and secretary of state of the United States from the beginning of Lincoln's administration until the end of Johnson's (1861 to 1869). It does not come within the scope of this work to trace the events of his great career in that long period, which have a conspicuous place in the history of the republic.

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**SEYMOUR, HORATIO** (born in Pompey Hill, Onondaga county, New York, May 31, 1810; died in Utica, New York, February 12, 1886), studied law with Samuel Beardsley and Greene C. Bronson, and was admitted to the New York bar in 1832. Although this suffices to number him among the statesmen-lawyers who have been the glory of the New York bar, he never practiced his profession. There can be no doubt, however, that his legal training was of great advantage to him in his illustrious and valuable public career.

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**SHAFFER, CHAUNCEY** (born in Broome county, New York, June 4, 1818; died in New York City, May 15, 1894), was the son of Gilbert Shaffer, a native of Columbia county, New York, and Sarah Burdick, a member of a prominent Rhode Island family. He was graduated at the Wesleyan University in 1836, and for two years was principal of an academy in Oneida county, meantime studying medicine. He was admitted to the bar in 1843, and ever afterward was in active practice, becoming one of the most celebrated criminal lawyers of the state. During his career he defended thirty-three murderers, only one of whom was convicted. In 1869, however, he discontinued this variety of practice, having taken an oath never again to defend a murder case. One of his most famous trials was his prosecution of Stevens, accused of poisoning his wife, which lasted for twenty-one days, resulting in conviction, notwithstanding the able efforts of very distinguished counsel on the other side. In another well-remembered case he succeeded in establishing the proposition that "reputation and cohabitation" constitute marriage, which became a precedent.

Mr. Shaffer was an eloquent public speaker. In the latter part of his life he took a strong interest in the temperance cause.



HERMAN, HENRY (born in Albany, New York, March 6, 1808; died in Washington, District of Columbia, March 28, 1879), was graduated at Yale College in 1829, and after admission to the bar practiced for a while in Connecticut, Albany and New York City, but mainly in the City of Washington, where he held a position in the treasury. He published "An Analytical Digest of the Law of Marine Insurance to the Present Time" (New York, 1841), a "Governmental" history of the United States (1843), and a history of slavery (1858).

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IBLEY, MARK HOPKINS (born in Great Barrington, Massachusetts, in 1796; died in Canandaigua, New York, September 8, 1852), was carefully educated, studied law, and having removed to Canandaigua in 1814 was admitted to the bar, and became an exceedingly successful advocate. He was active in politics. He was a member of the assembly in 1834 and 1835, a member of congress from 1837 to 1839, subsequently state senator, and in 1846 became county judge.

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ILLE, NICASIVS DE (born in Holland about 1600), enjoys the distinction of being the first counsellor of the Dutch colony of New Amsterdam, arriving in this country July 24, 1633. He had been bred a lawyer, and, with the exception of Adrian Van der Donck, was undoubtedly the first of that profession in New Amsterdam, now the City of New York. He was an important and useful man in the early colonial government. A resident for a number of years of New Utrecht, Long Island, he was the author of a concise history of that settlement.

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*Nicasius de Sille*



MITH, EDWARD DELAFIELD (born in Rochester, New York, May 8, 1826; died in Shrewsbury, New Jersey, April 12, 1878), was the son of Doctor Archelaus Smith, a surgeon of the war of 1812. He was educated at the University of the City of New York, graduating at the age of twenty, and two years later was admitted to the bar. He formed a partnership with Cliff Smith in 1851, and later with Isaac T. Martin and Augustus F. Smith, a brother. From 1854 to 1859 he published four volumes of reports of selected judicial decisions of the Court of Common Pleas, known as "E. D. Smith's Reports." He was for a time a member of the law faculty of the University of the City of New York, and until his death a member of the law committee of the council. In April, 1861, he became United States district-attorney at New York, and while holding

that office brought to the scaffold Nathaniel Gordon, master of the slave-ship *Erie*. He also conducted the cases against John N. Andrews, a leader of the New York riots. He resigned as district attorney, resumed practice alone and built up a large and lucrative business. He later was appointed corporation counsel, being succeeded by William C. Whitney in 1875. At the time of his death he was attorney of record in the *Junel* case.

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**S**MITH, ERASMUS DARWIN (born in De Ruyter, Madison county, New York, October 10, 1806; died in Rochester, New York, November 11, 1883), attended Hamilton College and studied law. He served three terms as master in chancery from 1833. In 1841 he became clerk of the 8th New York district, having been injunction master the year previous. Elected a justice of the Supreme Court of the state in 1855, he served continuously on that bench until his retirement on account of age in 1877. During this period he was long assigned to general term (from 1872 to 1877), and sat upon the Court of Appeals bench in 1862 and again in 1872. The most famous of his decisions was the one delivered in the case of *Hayes vs. Powers*, in which he vindicated the authority of the federal government to issue paper money during war and constitute it a legal tender. Of this case Chief-Justice Chase, of the United States Supreme Court, said: "Its influence on the credit of the government was equal to a victory in the field."

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**S**MITH, ERASMUS PESHINE (born in New York City, March 2, 1814; died in Rochester, New York, October 21, 1882), was graduated at Columbia College in 1832 and at Harvard Law School in 1833, engaging in practice in Rochester. In 1850 he became professor of mathematics in Rochester University, and in 1853 superintendent of public instruction for the State of New York. Between 1857 and 1864 he was reporter of the Court of Appeals. In the latter year he was appointed examiner of claims by Secretary Seward, also continuing under Secretary Hamilton Fish, and in that important capacity he performed services of much value to the nation. He was well versed in international law, on which account he was recommended to the mikado of Japan, who desired to employ an adviser in this department. He served Japan five years, especially distinguishing himself by breaking up the Chinese "coolie" trade.

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**S**MITH, HENRY KENDALL (born on the island of Santa Cruz, April 2, 1811; died in Buffalo, New York, September 23, 1854), was the son of a landed proprietor of Santa Cruz, who, after the transfer of the island by England to Denmark in 1815, became bankrupt. The son, at the age of eight, was sent to Bal-

timore, Maryland, where he received a good education. At seventeen he entered a dry-goods store in New York, as a clerk, but soon afterward he left this employment to begin the study of the law in the office of Daniel Cady, at Johnstown. He was admitted to the bar in that place in 1832, and soon became prominent in his profession and in democratic politics. Removing to Buffalo in 1837, he was in partnership there, successively, with Israel T. Hatch, George W. Clinton, General Isaac Verplanck, and R. V. Stevens. He rose to the position of a leader of the Buffalo bar, and many of the cases in which he took part became precedents in the Supreme Court and the Court for the Correction of Errors. He was appointed district-attorney of Erie county in 1838, but soon resigned. In 1844 he was made recorder of Buffalo, and in 1850 was elected mayor. From 1846 to 1848 he was postmaster of the city.



**SMITH, JOSHUA HETT** (born in New York City, in 1736, where he died in 1818), was the son of the elder William Smith (q. v.). He was a successful lawyer in New York City prior to the Revolution. In that struggle he was a decided tory, and was implicated to some extent with Major André in connection with the treason of Benedict Arnold. Arnold and André passed the night together at his residence at Haverstraw, New York. Indeed, Smith was tried for complicity in the affair by a military tribunal, but was acquitted. He was kept in ward for a time, but escaped to New York City, then occupied by the British, and upon its evacuation went to England.



SMITH HOUSE, HAVERSTRAW.<sup>1</sup>

Later he returned to the United States. He wrote a partisan "Authentic Narrative of the Causes that Led to the Death of Major André" (London and New York, 1808 and 1809).



**SMITH, WILLIAM** (born in Northamptonshire, England, February 2, 1655; died in Brookhaven, New York, February 18, 1705), was one of the earliest chief-justices. At the age of twenty he was appointed governor of Tangiers—whence the name of Tangier Smith, by which he is sometimes called. The project of forming a British colony there being abandoned, he returned to England, and three years later, during Dongan's governorship, came to

<sup>1</sup> In this house, the residence of Joshua Hett Smith, Major André met General Arnold, on the morning of August 22, 1788, and arranged the plan of the surrender

of West Point. It stands on what is now Treason Hill, near Haverstraw, on the Hudson, and can be seen from the river.



New York, where he is supposed to have engaged in trade. Within a week after the arrival of Governor Sloughter he was appointed a member of the council. He was also put on the commission of oyer and terminer for the trial of Leisler and his associates, and upon the creation of the Supreme Court was made its second justice. At the same time he was appointed judge or delegate of the Prerogative Court of Suffolk county.

He held the office of chief-justice throughout the administration of Governor Fletcher. He was supplanted October 30, 1700—Stephanus Van Cortlandt taking his place,—but was restored on November 25 of the same year. The following January he gave way to Abraham de Peyster, who in turn was succeeded by Attwood, but after the latter's flight he was again appointed chief-justice (June 9, 1702), and he continued to serve until April of the next year.

He was a resident of Brookhaven, Suffolk county, where he acquired an extensive estate, subsequently erected into a manor—Saint George manor—by patent of Governor Fletcher (1693), whose prodigal grants of public lands to favored persons were afterward assailed by more than one general assembly.



**SMITH, WILLIAM** (born in Newport-Pagnel, Buckinghamshire, England, October 8, 1697; died in New York City, November 22, 1769), was the son of Thomas Smith, and came to this country with his father and two brothers, John and Thomas, arriving in New York City August 17, 1715. James Alexander, one of the most prominent lawyers of the colony, and father of the titular Earl of Stirling, came over in the same vessel. He was graduated at Yale in 1719, and for five years was tutor in that institution.<sup>1</sup> He was learned in the sciences, a good theologian, and as a linguist proficient in French, Latin, Greek and Hebrew. Severing his connection with Yale College, he returned to New York City, where he was admitted to the bar May 20, 1724. He soon gained recognition and acquired a successful practice. His eloquence as an advocate was perhaps his most striking characteristic. According to his son, the historian, in an election contest for a seat in the New York assembly, Smith's oratory alone won the contest for his client, his effective portrayal of the scene of the crucifixion leading the assembly to reject all the votes of its Jewish members.

In 1751, by appointment of Governor George Clinton, he succeeded Richard Bradley as attorney-general and advocate-general of the colony, and served one year, but was not confirmed by the home authorities because of his previous prominence in prosecuting cases against the government under Cosby. He also held the office of re-

<sup>1</sup> He declined the rector's chair in Yale College made vacant by the removal of Doctor Cutler, and was the first lay character of it belonging to the Colony of New York.

corder, and was a member of the governor's council from 1753 to 1767, his son, William Smith, the chief-justice and historian, succeeding him in that position. As councillor he attended the colonial congress held at Albany in June, 1754, and was the New York member of the committee to draft the plan of union. He was himself an eloquent advocate of the scheme of union of the American colonies. He also served in June, 1754, as commissioner to determine the boundary between Massachusetts and New York. In 1760 he refused the appointment as chief-justice of the Supreme Court on a technicality involving a principle respecting the dignity of the court and the extent of royal interference. In 1763 he was appointed an associate-justice of the same tribunal, and so continued until his death, in 1769. In an obituary notice following his decease the New York *Gazette* characterized him as "a gentleman of great erudition, the most eloquent speaker in the province, and a zealous and inflexible friend to the cause of religion and liberty."

It now remains to speak of Judge Smith's pre-eminent services in establishing the right of free speech and a free press. The two great leaders of the colonial bar of that day, Smith and James Alexander, with Lewis Morris, the eminent chief-justice, formed a distinguished triumvirate whose unceasing endeavors finally secured the triumph of these principles.

The case between Governor Cosby and Rip Van Dam inaugurated the contest. Although Van Dam, as senior councillor, had served a year as acting-governor between the death of Montgomerie and the arrival of Cosby, he found that the latter came with authorization to appropriate half the year's salary to himself. Van Dam refused to relinquish it, and Cosby began a suit against him. The Governor proposed to erect a chancery court to try the case—a thing always objectionable to the popular party, which could not complacently tolerate a system under which the executive, representing the king, became interpreter of the law as well as its executor. Cosby did not, of course, go to the extreme of presiding as chancellor in the trial of his own suit, but constituted James De Lancey, Frederick Philipse and Chief-Justice Morris, of the Supreme Court, a court of equity to try it. William Smith and James Alexander were counsel for Van Dam. They struck at the root of the issue, declaring that the governor had no power to create an equity court, such power residing alone in parliament or the legislature. Mr. Eugene Lawrence has thus sketched the dramatic features connected with this famous case:

The suit against Van Dam was to be tried before the three judges as an exchequer court; it excited an intense interest among the people. All the old violence of party spirit was roused by this attempt, as it was thought, upon their liberties. The old men who may have seen Leisler and Milborne led out to execution, and who had never forgotten the dreadful scene; the young men who chafed under the haughty rule of the English officials; the Dutch citizens who had felt the scorn of

their corrupt rulers and repaid it; the presbyterians and other dissenters who had been persecuted and plundered by the episcopalian governors, and probably the great majority of the people, looked upon Rip Van Dam as only the new victim of a foreign tyranny. For twenty years a member of the council, for several years its senior member, its recent president, and one of the most respected members of the community, he was now unjustly accused of improperly withholding moneys, and prosecuted in an illegal court. Van Dam was not to be terrified by the frowns of the governor and his followers. He boldly resisted, and was not easily to be destroyed. . . . It would be useless to repeat here the technical argument of the two lawyers. They boldly denied the authority of the royal council, or even of the king himself, without the consent of parliament, to legislate for New York; they made, in fact, an appeal for independence. The opposing counsel were about to enter into the merits of the case, when, to the surprise of Cosby and his adherents, the chief-justice, Morris, interposed and delivered a decision in favor of the plea of Van Dam. He held with Smith and Alexander that the governor had no power to create an equity court. His two colleagues, De Lancey and Philipse, astonished at his boldness, gave opposing opinions defending the governor; they overruled even the chief-justice. But no final decision was ever reached in this eventful case. The Court of Exchequer, as constituted by Cosby, never met again. The public opinion set too strongly against it. Van Dam was the victor in the contest against the court party, and his bold resistance led to a new sense of colonial rights—perhaps to final independence.<sup>1</sup>

In retaliation Cosby ceased to summon James Alexander to his council and removed Morris, who for twenty years had been chief-justice, appointing De Lancey in his place. This arbitrary course

augmented the excitement which already existed and divided the province into two violent factions. . . . The right of the Supreme Court to exercise jurisdiction in equity was brought before the general assembly at its next session. Petitions were presented for the repeal of the Court of Exchequer as a branch of the Supreme Court, and for the general re-establishment of all the courts by an act of the assembly. The governor had a majority, but the opposition was so formidable from the men that composed it and the strength derived from the popular support, that a resolution was agreed to inviting the two most prominent lawyers of the respective parties to argue the question before the bar of the house. Mr. Smith, the father of the historian, was heard on the democratic side, and Mr. Murray, the oldest member of the bar, in reply—in an argument evincing on both sides a great deal of ability and an amount of research and antiquarian information that was scarcely to have been expected.<sup>2</sup>

Smith, Alexander and Morris now became the distinguished leaders of the popular party, which incessantly opposed the pretensions of the governor. Bradford's *Gazette* being the servile organ of the latter, a rival newspaper, the *New York Weekly Journal*, was started, with John Peter Zenger as editor. The first number was issued November 12, 1733.

The chief purpose of the paper lay in its bitter attacks upon Cosby's administration. No point of assault was neglected, no personality or satire spared. Morris, Alexander, Smith and others had formed a club that met weekly, and here were no doubt arranged and suggested the essays, the squibs, the verses, the parodies, and

<sup>1</sup> "Memorial History of New York," Vol. ii., pp. 217-218.

<sup>2</sup> Judge Daly's "Historical Sketch of the Judicial Tribunals of New York," p. 43.

sharp rejoinders to the heavy and often ill-considered replies that were sometimes inserted in the *Gazette*. Many of the leading essays in the *Journal* are written in a clear, correct style, full of force and novelty. Their chief aim was to defend the most liberal view of the liberty of the press. The writers felt, no doubt, that they lived under a despotism that might, at any moment, strike them with its sharp penalties. They used all the resources of reason to rouse the people to resistance. Their argument is unanswerable, because true. But its unrivalled power lay in its novelty. Few in 1730 had even heard of the liberty of the press. Fewer understood its meaning. It was many years before Junius was to complete his reputation by his powerful enunciation of the same truth. It was so long since Milton had written his great period on Truth's certain victory, that it was forgotten. In the days of Swift and Addison few read Milton's prose. But week after week, in grave and stately sentences, the New York writers kept up one long, loud cry, "The Liberty of the Press!" The effect was startling. It spread from colony to colony: a newspaper was soon established in Charleston that took up the cry; Boston and Philadelphia watched attentively the struggle in New York, and we may trace in the leading articles of the *New York Weekly Journal* of 1733 and 1734 many of the ideas and sometimes the language itself that Otis, Franklin and Adams made use of in defending and securing the liberties of the continent.<sup>1</sup>

The sequel is well known. Certain issues of the *Journal* were consigned by the council to be burned "near the pillory by the hands of the common hangman," while Zenger was arrested, imprisoned and brought to trial for libel. But spite of De Lancey's efforts the grand jury refused to indict Zenger. Instead of being released, however, the attorney-general preferred new charges against him. Smith and Alexander came once more to the front as Zenger's counsel. They boldly attacked the validity of the court, declaring that Cosby's removal of Chief-Justice Morris without consulting his council was illegal, and that the commissions of Judges De Lancey and Philipse were invalid, the appointments being "during pleasure," instead of during "good behavior." (Smith's refusal of the chief-justiceship in 1760 was because his commission read "during pleasure," thus resting the stability of judicial institutions upon the good pleasure of the appointing power, which he would not allow.) The result of the bold stand of Smith and Alexander was that both were expelled from the New York bar by Chief-Justice De Lancey. But their place was taken at Zenger's trial by Andrew Hamilton, leader of the Philadelphia bar. He was instructed as to the merits of the case by his deposed New York colleagues, and at the trial made one of the most brilliant and powerful addresses in a great case recorded in the annals of legal practice on this continent.

Zenger was acquitted. Thus "New York, we may well remember, was the first of the cities to assert the liberty of the press when, all over Europe and America, thought was chained and intellect imprisoned." The entire credit of the great achievement, momentous in the history of the world, we may ascribe to the remarkable courage and ability of four great colonial lawyers—William Smith, James Alexan-

<sup>1</sup> "Memorial History of New York," Vol. II., pp. 227, 228.



der, Lewis Morris and Andrew Hamilton. Smith and Alexander, who had been expelled from the bar in a bootless attempt to frustrate justice, were of course subsequently restored to practice, and throughout their careers remained the acknowledged and honored leaders of the legal profession.



SMITH, WILLIAM (born in New York City, June 25, 1728; died in Quebec, Canada, December 3, 1793), was the son of the preceding. He is generally spoken of as "the historian," both in recognition of his famous work, the first history of New York, and also to distinguish him from his eminent father and from the William Smith known as "Tangier" Smith, who was chief-justice of the colonial Supreme Court of New York at a much earlier period.

The historian was educated at Yale, like his father, being graduated in 1745, studied law, was admitted to the bar in New York City in October, 1750, and was soon in the enjoyment of a successful and extensive professional business. He began practice in partnership with William Livingston, afterward governor of New Jersey, and with him was appointed by the New York assembly to revise the laws—a task which Chief-Justice Horsmanden had undertaken but left uncompleted. This important labor Smith and Livingston creditably performed, the first volume of their revision being published in 1752 and the second in 1762.

Judge Smith became a member of the king's council in 1769. He greatly deplored the Revolution, and endeavored to remain neutral, but of course found it a difficult and trying position. His own plan for the settlement of the differences which had arisen was a scheme of colonial representation in parliament—the general idea of which Benjamin Franklin also advocated. When Washington entered New York City in April, 1776, Mr. Smith offered him his city residence and retired to his country-seat at Haverstraw. In June of the following year he was summoned before the committee of safety at Kingston, which inquired concerning his sentiments. When asked if he considered himself a subject of the independent states of America, he replied that he did not consider himself discharged from his oath of fidelity to the crown of Great Britain. His liberty was accordingly confined to the bounds of Livingston manor.

By 1778 he appears to have come to the settled conclusion that his oath to the crown was inviolate, and when New York City was in the hands of the British he obeyed the summons to return there, and subsequently accepted a commission from the king as chief-justice of New York. This office he held until the evacuation of New York by the British in 1783, when he accompanied Sir Guy Carleton to England. He was afterward appointed chief-justice of Canada, held that

position until his death, and was "literally the father of the reformed judiciary of that province." He has been thus characterized :

He was an upright and just judge, and, among the minor changes that he instituted in the courts, established the office of constable, whose duties before his administration had devolved upon the soldiers. He was intimate with many eminent English statesmen. . . . He was an eloquent speaker, and many of his law opinions were collected and recorded by George Chalmers in his "Opinions on Interesting Subjects Arising from American Independence (1784)."<sup>1</sup>

Judge Smith published his "History of the Province of New York from its Earliest Settlement to 1732" in the year 1757, at the same time issuing a pamphlet in defence of Governor Shirley's military career. He was then but thirty years of age, but his work has been the inexhaustible resource of historians from that day to this. Another volume, carrying the history through the Revolution, at his request was not to be made public until some time had elapsed after his death. Both volumes were published by the New York Historical Society in 1829.



**S**PENCER, AMBROSE (born in Salisbury, Connecticut, December 13, 1765 ; died in Lyons, New York, March 13, 1848), attended Yale and Harvard colleges, being graduated from the latter in 1783, and studied law with John Canfield, of Sharon, Connecticut. He settled in Hudson, New York, and soon was actively concerned in politics. He was city clerk of Hudson in 1786 ; a member of the assembly in 1793 ; a member of the state senate from 1795 to 1802 ; assistant-attorney-general of Columbia and Rensselaer counties in 1796 ; from 1802 to 1804 attorney-general of the State of New York ; a justice of the Supreme Court of the state from 1804 to 1823, and after 1819 chief-justice ; a member of a committee with Peter J. Munro by legislative appointment in 1808 to suggest reforms in the chancery system of the state ; a presidential elector in 1809 ; a prominent member of the constitutional convention of 1821 ; mayor of Albany from 1824 to 1826 ; a member of congress from 1829 to 1831, and chairman of the whig national convention at Baltimore in 1844.

He was author of the bill abolishing capital punishment in the State of New York in all cases except treason and murder, and secured the establishment of the state prison at Sing Sing. In Congress he contended against the injustice done to the Cherokee Indian nation. He opposed an elective judiciary in this state. He was learned in the law, and especially in equity jurisprudence. Many able decisions delivered by him are contained in the New York Supreme Court Reports from 1799 to 1803 and from 1808 to 1812, and in the New York Chancery Reports from 1814 to 1823.

<sup>1</sup> Appleton's "Cyclopædia of American Biography," Vol. v., p. 501.



PENCER, CHARLES S. (born in Ithaca, New York, in 1827; died in New York City, August 11, 1887), was graduated at Wesleyan University, Middletown, Connecticut, was admitted to the bar, and began practice at Elmira, but soon removed to New York City, where he gradually gained a large practice in the criminal courts. He was associated, at different times, with Philip Jordan, James T. Brady and John J. O'Brien. He was elected to the assembly as a republican in 1860 and 1861, and again in 1873. In 1884 he was a candidate for district-attorney, but was defeated by Randolph B. Martine.



PENCER, JOHN CANFIELD (born in Hudson, Columbia county, New York, January 6, 1788; died in Albany, May 20, 1854), was a son of Chief-Justice Ambrose Spencer. He was trained from boyhood for the bar, and after his graduation from Union College pursued his legal studies in his father's office. He was private secretary to Governor Tompkins. At the age of twenty-three he was admitted to the bar, and removing to Canandaigua he soon became there both a professional and a political leader. In 1815 he was appointed district-attorney for the district embracing the five western counties of the state. Elected to congress, he was conspicuous in that body for his strong opposition to the United States bank. He also served in the assembly, of which he became speaker, and in the state senate and Court of Errors.

In 1827 he was appointed a commissioner to revise the statutes of New York, in place of Henry Wheaton, resigned. He contributed valuably to the work begun by his associates, Benjamin F. Butler and John Duer. In 1829 he was designated by Governor Van Buren as prosecutor of the persons charged with abducting William Morgan. He was elected secretary of state of New York in 1837, and he held the portfolios of secretary of war and secretary of the treasury in the cabinets of Harrison and Tyler. President Tyler nominated him for associate-justice of the United States Supreme Court, but owing to factional considerations the senate refused to confirm him. Afterward he devoted himself exclusively to professional practice.

John C. Spencer was one of the greatest lawyers New York state has produced. The general judgment of the profession respecting him, says Mr. William Allen Butler, in his monograph on "The Revision and the Revisers," "was summed up in the brief sentence of a journalist who characterized his 'singular capacity to labor without fatigue as only equalled by the extent and variety of the professional services he performed.'"



PENCER, JOSHUA A. (born in Great Barrington, Massachusetts, May 13, 1790 ; died in Utica, New York, April 28, 1857), was educated at the public school and academy of his vicinity, served in the war of 1812, and at twenty-five, after having read law in the office of his elder brother, Ichabod Spencer, at Lenox, Massachusetts, was admitted to the bar. He practiced several years at Lenox, removing to Utica in 1828. He there formed a partnership with William H. Maynard, and later was associated with Francis Kernan. In 1845 he was elected to the state senate. In 1848 he was mayor of Utica, and under Harrison and Tyler he was United States district-attorney for the northern district of New York. He was one of the recognized leaders of the Utica bar.

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TEVENS, JAMES ALEXANDER (born in New York City, January 29, 1790 ; died in Hoboken, New Jersey, October 7, 1873), was the son of John Stevens, the inventor. He was graduated from Columbia College in 1808, and admitted to the New York bar in 1811. He took an important part in the great legal contest of *Ogden vs. Gibbons*, which resulted in the abolition of the Livingston-Fulton steamboat monopoly, and in which it was decided that navigable waters were under federal instead of state jurisdiction.

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TEWART, ALVAN (born in South Granville, Washington county, New York, September 1, 1790 ; died in New York City, May 1, 1849), educated himself, mainly by teaching, attended Burlington College (Vermont), read law, and began practice in Cherry Valley, New York. He soon gained an extended reputation both for his professional attainments and as an aggressive supporter of various principles. He advocated protective tariffs, public education and liberal expenditures for public improvements, and from about the year 1832, when he removed to Utica, he was an earnest champion of the causes of abolition and temperance reform. He maintained that congress had constitutional authority to abolish slavery, and was very instrumental in creating the abolition party which eventually held the balance of power in the State of New York. He was the candidate of this party for governor.

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TILWELL, SILAS MOORE (born in New York City, June 6, 1800 ; died there, May 16, 1881), was the son of a revolutionary soldier, and a descendant of Nicholas Coke (brother of the regicide, John Coke), who assumed the name of Stilwell upon coming to the colonies. Mr. Stilwell received an academic education ; engaged in mercantile pursuits in New York City ; removed to



Tennessee and became a member of its legislature in 1822 ; thence to Virginia, where he became clerk of Tazewell county, a member of the legislature, and was admitted to the bar ; in 1828 returned to New York City, and from 1829 to 1833 was a member of the legislature of this state. He was candidate for lieutenant-governor when William H. Seward ran for governor in 1834 ; was chairman of the board of aldermen of New York City in 1835 and acting mayor at the time of the great fire of that year ; declined a cabinet appointment offered him by President Harrison ; became United States marshal for the southern district of New York, and accepted a special mission to the Hague. He was author of the so-called "Stilwell act," abolishing imprisonment for debt in New York state, as also of the bankrupt act, national banking act and system of organized credits of 1863. Between 1860 and 1872, under the name of "Jonathan Oldbuck," he was a frequent contributor to the *New York Herald*. He wrote several volumes on financial subjects.

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TORRS, HENRY RANDOLPH (born in Middletown, Connecticut, September 3, 1787 ; died in New Haven, Connecticut, July 29, 1837), was graduated from Yale College in 1804, admitted to the bar in 1807, and subsequently became judge of Oneida county, New York, serving five years. He was in congress continuously from 1819 to 1831, where he attained high rank as an eloquent debater. At the close of his congressional service he located in New York City, and became recognized as one of the leading practitioners.

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TOUGHTON, EDWIN WALLACE (born in Springfield, Vermont, May 1, 1818 ; died in New York City, January 7, 1882), came to New York City in 1836, studied law, and was admitted to the bar in 1830. He achieved a conspicuous place in the profession, and appeared in many important cases, including the Goodyear rubber cases, the suit of Ross Winans against the Erie railroad and the receivership cases of the same road in the United States courts in 1868. He was counsel for William M. Tweed for a time, when the attack upon the notorious boss first began, and was counsel for the stockholders of the Emma mine. He ably advocated the claim of General Hayes before the electoral commission, and in 1877 was appointed minister to Russia. He returned to the United States in 1879.

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STRONG, GEORGE TEMPLETON (born in New York City, February 26, 1820 ; died there, July 2, 1875), was the son of George Washington Strong, a well-known lawyer of New York City, and grandson of Judge Selah Strong. He was graduated from Columbia College in 1838, and became a successful

practitioner in New York City. He was a member of the executive committee and treasurer of the United States sanitary commission during the civil war.



**STRONG, SELAH BREWSTER** (born in Setauket) Long Island, December 25, 1737; died there, November 29, 1872), was a son of Thomas S. Strong, a judge of the Common Pleas Court of Suffolk county. In 1811 he was graduated at Yale, and in 1814 was admitted to the bar. From 1821 to 1841 he was district-attorney of Suffolk county, from 1843 to 1845 a member of congress, and from 1847 to 1860 a judge of the Supreme Court of New York, from which bench he delivered very able opinions. He sat in the constitutional convention of 1867.



**STRONG, THERON RUDD** (born in Salisbury, Connecticut, November 7, 1802; died in New York City, May 15, 1873), was the son of Martin Strong, county judge and a member of the Connecticut legislature. With him the son studied law, and in 1826 was admitted to the bar in Wayne county, New York, whither the family had removed. He began practice in Palmyra, New York; was district-attorney of Wayne county from 1834 to 1839; a member of congress from 1839 to 1841; a member of the legislature in 1842, and from 1852 to 1860 was a justice of the Supreme Court, and served a year in the Court of Appeals. A large proportion of his opinions were reported, his record in this respect ranking him next to Judge Hiram Denio. After his retirement Judge Strong resumed practice in Rochester, and in 1867 removed to New York City, where he acquired a large business and frequently acted as referee.



**SULLIVAN, ALGERNON SYDNEY** (born at Madison, Indiana, April 5, 1826; died in New York City, December 4, 1887), was the son of Judge Jeremiah Sullivan, of Indiana, and his wife, Charlotte Rudesel Cutler, of an old Virginia family. The family of Sullivan is one of the interesting septs of the ancient Irish nobility, tracing its descent in unbroken line from a remote antiquity.<sup>1</sup> The following account of the more immediate ancestors of Mr. Sullivan is extracted from Burke:

<sup>1</sup> According to Burke it "deduces its descent from Oiliu Oilum, King of Munster, who reigned A. D. 125, and whose lineage the Hibernian chronicles trace from Heber Fionn, one of the sons of Milesius" ("Landed Gentry," 8th Ed., London, 1894). Of the early history of the Sullivans of County Cork—the family of Mr. Sullivan of New York—O'Hart ("Irish Pedigrees," 1st Ser., Dublin, 1876, p. 225) gives this account: "In Cork, the following have been the Irish chiefs and clans: 1. The O'Sullivans had the ancient territory of Beara, now the baronies of Beare and Bantry in the

County Cork, and were called O'Sullivan Beara, and styled princes of Beara. Another branch of the family, called O'Sullivan Mor, were lords of Dunkerron, and possessed the barony of Dunkerron, in the County Kerry, and their chief seat was the castle of Dunkerron, near the river Kenmare. A third branch of the O'Sullivans were chiefs of Knockrahan, in Tipperary. The O'Sullivans . . . took their name from Sulleabhain [sometimes written "Sulevan"; *O'Sullivan* means "sons of Sullivan"], one of their chiefs in the tenth century. In the reign of James I., their extensive possessions

Daniel O'Sullivan, a lineal descendant of the king of Munster, dropped the prefix "O" from his surname. He married Margaret Tucker, of County Kerry, and dying in 1682, left a son, Darby Sullivan, Esq. The latter married Joanna Taylor, of Kilbolane Castle, and died in 1737, leaving three sons, Jerome, William and James. Of these, William was born September 29, 1729, and married, February 15, 1763, Mary, daughter of Honorable Thomas Morgell, of Mount Morgell, County Limerick. He died February 22, 1795.

This William Sullivan, whose seat was Tullilase House, Charleville, County Cork, was the grandfather of Thomas Lyttleton Sullivan, who came from Charleville to Augusta county, Virginia, in March, 1791.

The latter married, in Virginia, Margaret Irwin, a lady of Scotch descent. Their only child, Honorable Jeremiah Sullivan, was educated at William and Mary College, served as a volunteer soldier during the war of 1812, and upon the return of peace declined a commission in the United States army in order to study law. He was admitted to the bar in 1816, and, having selected Madison, Indiana, as his future home, removed to that place the following year with his parents and young wife, Charlotte Rudesel Cutler. He became one of the most prominent legal figures in Indiana, and for many years was a justice of the Supreme Court. He was "a learned and able judge, to whom Indiana will ever remain indebted for his services in laying the firm foundation of its jurisprudence."

Algernon Sydney Sullivan was the second son in a family of eleven. He was carefully educated at home, and attended college at Hanover, Indiana, and at the Miami University in Ohio, from which he graduated in 1845. The question of appropriating funds for the establishment of an adequate public school system having been made a political issue in Indiana, immediately after his graduation from college, at the age of twenty, Mr. Sullivan threw himself into this canvass, and stumped the state in favor of the school system, gaining by his eloquence the sobriquet of "the young Demosthenes." Later he studied law, was admitted to the bar, and, removing to Cincinnati in 1849, began the practice of his profession. In that city he rose with remarkable rapidity to distinction in professional and private life. Although so young a lawyer, he was selected, in 1851, by the city authorities of Cincinnati, to deliver the address of welcome upon the occasion of the visit of Kossuth, the Hungarian patriot. When the collapse of the values of his investments in property in the northwestern states released his interests in that section and led to his removal to New York City, in May, 1857, his legal abilities and social brilliancy instantly secured for him the same professional recognition and social honors he had enjoyed in Cincinnati. The year after taking up his residence in New York he was selected one of the members of the committee which escorted the remains of President Monroe to Richmond, Virginia. In 1871 he was

were confiscated in consequence of their adherence to the earls of Desmond and Tyrone in the Elizabethan wars, and the heads of the family retired to Spain,

where many of them were distinguished officers in the Spanish service, and had the title of counts of Bearhaven."

chosen to deliver the welcoming address to Grand Duke Alexis, of Russia.

Mr. Sullivan's private law practice was interrupted by his public service as assistant-district-attorney of the city during the three years 1870-73, and as public administrator for ten years from 1875 to 1885. It was also interrupted at all times by appeals for gratuitous service which his generous nature never could resist. The large corporations desiring his brilliant services again and again found they could not be secured because his energies were engrossed by his devotion to poor and unknown clients, whose causes he championed without hope of any remuneration save the approval of a good conscience. The extent to which he gave his professional attention to this class of work is scarcely credible. His severe labors in such connections, without rest or relaxation, as well as in attending to the more profitable business that came to him, finally led to his death through nervous exhaustion. In the later years of his life his legal associates, desirous of reserving his energies for the important corporation practice of the firm, instituted, unknown to him, an informal system of cross-examination of those who sought interviews with him during office hours, to prevent them from making appeals to which it was certain he would respond, however injurious to his own material interests the demands might be. Had Mr. Sullivan known this he would have been deeply grieved. Moreover, those who failed to see him at his office had but to call at his home in the evening to attain their object.

It must be said, further, that his generous bestowal of his legal abilities upon the needy—great as was its encroachment on his time and strength—was but a single phase of the spirit of self-sacrifice. The words of General Burnett, "he kept himself poor by his giving, and he wore his life away in this striving to help his fellow-man,"<sup>1</sup> are literally true. "Few men whom I have known in this city during the last twenty-five years," said another, "have been as willing to forego their private interests and convenience in order to contribute counsel, efforts and means to advance the public good."<sup>2</sup> Said his pastor: "He felt the sorrows and troubles and difficulties of others as if they were his own, and he gave freely of his time, his money, and, what was best of all, himself, to their easement. He always espoused the cause of the weak, the oppressed, and the friendless, and chivalrously threw himself, like a modern Christian knight, into every scheme for the helping and uplifting of men which came to his attention."<sup>3</sup> Another remarked: "His purse, his advice, his services and his sympathies were ever at the command of the poor and suffering. His tongue and his pen, his time and his brain, he freely gave to the service of mankind."<sup>4</sup> We pass from this point with one final citation:

<sup>1</sup> Address at special meeting of the Ohio Society.

<sup>2</sup> Address of Honorable O. B. Potter, at memorial meeting of the Young Men's Democratic club of New York.

<sup>3</sup> Reverend Richard D. Harlan, in the *New York Evangelist*.

<sup>4</sup> Address of John C. Calhoun, at memorial meeting of the New York Southern Society.



It is not too much to say, I think, that there was no man in this great city who did more for the poor than Algernon S. Sullivan. . . . There was no organized movement for the alleviation of suffering, for help and succor to earth's unfortunates, which did not receive his warm, strong sympathy and his efficient aid. It was known of all the good men and good women how ready he was to do all in his power to help forward any good work, and so it came about that when an effort was to be made to organize some charitable movement, to enlist and arouse the people in behalf of some good cause, to relieve suffering, to drive out vice, to lift up the fallen, Mr. Sullivan was expected, and was there, always found leading, giving expression and direction to the effort. In appealing to the people in such a cause, how eloquent, how pathetic he was, what sympathetic, what pleading, what tender tones in that musical voice as he told of the long hours of toil, the dark days of sickness, the endless misfortunes and voiceless sufferings of the poor and the unfortunate!<sup>1</sup>

Mr. Sullivan's distinguishing professional character is therefore exceedingly unique:—the services of one of the most able lawyers New York City has ever known, not only were not uniformly employed in suits of celebrity, but are largely buried with the unwritten history of the lower courts in the humble litigations of the unfortunate. And such was his whole-heartedness in these sacrifices, that in every instance of the kind where the details have been ascertained, he brought the same legal brilliancy, zeal, energy, careful preparation and moving eloquence, which made his efforts so valuable and so effective in the most weighty matters. It is this feature of his work rather than his famous cases which merits peculiar mention, for here he stands alone in a stern and selfish world, inviting the emulation of all men.

On the other hand, the trial of the officers and crew of the schooner *Savannah* on the charge of piracy in 1861—the most notable and dramatic of all Mr. Sullivan's cases—is likewise of special interest, because of the attending circumstances which displayed the sterling qualities of the man. This case Mr. Joseph Larocque characterized at the time as "one of the most interesting trials that ever took place on the continent of America, if not in the civilized world."<sup>2</sup> The *Savannah* had been commissioned as a privateer by a letter of marque from Jefferson Davis, had captured a prize, and had been captured in turn by a federal brig-of-war and the crew brought to New York City—not as prisoners of war, but to stand trial as pirates. President Lincoln had previously announced that those operating under "pretended letters of marque" from the southern states would be "held amenable to the laws . . . for the prevention and punishment of piracy."<sup>3</sup> The issue thus raised was momentous. It was not claimed by the counsel for the defence, of whom Mr. Sullivan was one,<sup>4</sup> that the federal government was required, perforce, to recognize the confederacy as a belligerent, but that since an organized and widely-recognized government certainly did exist *de facto* if not *de jure*, every consideration of human-

<sup>1</sup> Address of General Henry L. Burnett.

<sup>2</sup> Report of the trial (New York, 1862), p. 66.

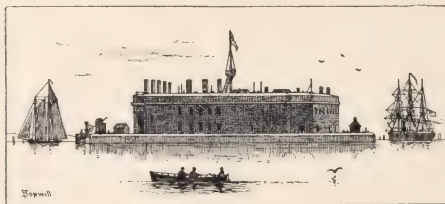
<sup>3</sup> Proclamation of April 19, 1861.

<sup>4</sup> Associated with him were Joseph Larocque, Daniel

Lord, James T. Brady, Joseph H. Dukes, Isaac Davega and Maurice Mayer, while William M. Everts, Samuel Blatchford and Ethan Allen assisted United States District Attorney E. Delafield Smith in the prosecution.

ity and canon of civilized law demanded a practical if not a formal and official recognition of the actual state of affairs, sufficient at least to prevent the haling into court and trial as ordinary criminals of captured persons whose sole offence was that of enlisting beneath the banner of a warring power and whose status was that of prisoners of war.

Mr. Sullivan's connection with the case was peculiar. He had been a lifelong democrat, and while he had always opposed slavery and done all in his power to prevent secession, it was well known that he recognized the doctrine of states' rights and did not favor a policy of coercion of the south at the cost of a terrible civil war. Thus, while others of the counsel had been called into the case by the prisoners or their friends, Mr.



PORT LAFAYETTE, 1861.

Sullivan was retained in their interest by the attorney-general of the confederate government. He was thereupon charged with treason, and immediately after the preliminary hearing in July,

1861, was summarily arrested and cast into prison without trial or examination. From this time until within a few days of the date of the trial, October 23, 1861, he was kept by the federal powers closely confined in Fort Lafayette, suffering severe privation, and was even denied the privilege of seeing his wife and child. The indignant protests of the lawyers and judges of the entire nation secured his release. Notwithstanding this cruel experience and the threats which hung over him, he at once appeared in court to defend the case. Says one who knew the facts:

He was called upon by many members of the bar, some distinguished and learned men. He was told: "Sullivan, you must not stand here and defend these gentlemen; your life is in danger; you cannot reach your home in safety if you do." His simple, true and ingenuous reply was: "But I am retained as their attorney." "That doesn't make any difference; you must not sacrifice your life or injure your life in their interest." He said: "That is a consideration which I as a lawyer cannot entertain. If my clients do not desire to avail themselves of my services, they can excuse me and employ some one else, but if they insist upon my representing them, I as a man and as a lawyer must stand and do my duty." And he did his duty at the request of his clients, even in the face of danger. That is, I say, an indication of his moral courage. He was a beautiful character; I know of none more lovely.<sup>1</sup>

<sup>1</sup> William J. Curtis, on motion to adjourn the Court of Common Pleas in memoriam.

With these facts in view, taking into account the bitter persecution he had just endured, his physical condition in consequence, and his total lack of opportunity for preparation, let those who have access to the record read the remarkable address of Mr. Sullivan in summing up the defence in this trial.<sup>1</sup> How absolutely fearless his lucid voicing of the delicate principles involved, which other counsel clothed in a little more of the obscurity dictated by caution! And yet how conciliatory the whole argument, how persuasive, how entirely imbued with the spirit of peace and gentleness, how absolutely devoid of every trace of the bitterness which his painful experiences must necessarily have engendered in any other breast!

Mr. Sullivan's other characteristics as a lawyer and a man may be fittingly summed up in the words of a few of those who knew him well. Says one :

It was his pride and pleasure as a lawyer to defend the right, and he could not be retained to defend the wrong, though he might make an effort to palliate mistakes, and accord to the law its demands, discounted by mercy to one who had without knowing it trespassed upon its requirements. We have known Mr. Sullivan to refuse large retainers when offered to defend deliberate wrong-doers, and to serve innocent wrong-doers without charge. . . . In short, he stood upon his own pedestal of right and justice, regardless of the rule of the legal bar to take retainers and throw the great power of his moral character and the influence of his professional prestige into cases where it would become necessary to strive to make the court swerve from its ermine purity, or to so bemuddle a jury as to close their eyes to the light of truth.<sup>2</sup>

One of the justices before whom he had frequently argued cases bears a like witness :

Of commanding appearance, kind and frank, he was always welcomed by the court in any case in which he appeared, because it was felt that his learning, ability and absolute truthfulness would assist the court in the trial of any question of law and fact with which it had to deal.<sup>3</sup>

Said William Winter :

His learning was varied and exact. His eloquence was natural, fluent, sweet, persuasive, often impassioned, always guided by pure taste, harmonious with reason, and directed upon noble objects. His veneration of the law and his high sense of moral responsibility invested his manner with a peculiar grace of splendid distinction; and this, combined with accuracy of legal knowledge, lucidity of statement, felicity of illustration, and copiousness of vocabulary, made him one of the most impressive orators of the American bar.

Still more remarkable, perhaps, is the tribute in the memorial of the American Bar Association :

He was a legal guide—practical, wise, judicial, with exquisite tact, with infinite patience, with a sense of equity almost intuitive. Adversary and client alike felt the power of his lucid, conscientious, wise advice. . . . He was recognized as one

<sup>1</sup> Report of the trial, pp. 218-231.

<sup>2</sup> Letter in *New Haven Journal and Courier*.

<sup>3</sup> Honorable Henry W. Bookstaver, of the Court of Common Pleas.

of the strongest, readiest, and most successful jury lawyers at the bar. His learning and tastes were so varied, however, that he was equally accomplished in the conduct of the practical and daily duties of his profession. . . . The law was a great mother to him. And he studied its philosophy, he pictured its principles with such love, wisdom and fairness, that no lawyer envied the pre-eminent rank which he attained and so easily held. It is fair to say that no lawyer, however great his fame, was regarded by the bench with greater confidence and esteem. The bench itself was not more sensitive than he to its dignity and honor. His life, his virtues, his judicial quality, his unwavering honesty and legal acumen led all judges to receive his words almost as those of a friend of the court—not merely as those of an advocate. No lawyer equalled him in the affection and admiration of the bar. No other lawyer occupied so peculiarly interesting a place in their hearts.

Mr. William Nelson Cromwell, who for a long term of years was one of Mr. Sullivan's professional associates, said :

Although one of the greatest, he was one of the simplest of men, with no vulgar aims, and with an unswerving faith in God and humankind.<sup>1</sup> He was the purest, sweetest, wisest man of his time. For nearly fifteen years I have been looking daily into his heart, and during all those years and under the thousand temptations of a busy life, professional, social, political, I never found there even remotest approach to sin. Not an unkind or harsh word to any human being, nor a falsehood, not a bitter thing, not a profane or indelicate thought ever passed those lips. Always gracious and altogether lovely; putting aside, not putting forward, his own great personality; reaching out both hands in constant helpfulness to men.

This is not the tribute of affection, nor its exaggeration; I mean my thoughts to be literally and exactly taken. Of whom else, man or woman, in all this world, could this be honestly witnessed? Unlike most great men, he grew greater the nearer we approached him. These qualities were stamped by God on his noble face, and were shown in every act of his daily life, so that all men who met him went away somehow refreshed and ennobled. Such a life cannot be phrased, it can only be loved; such a life cannot die; such an influence is more potent than man himself.



UTHERLAND, JOSIAH (born in Stanford, Dutchess county, New York, in 1807; died in New York City, May 25, 1887), was graduated from Union College, studied law in Waterford and Hudson, and commenced practice in Livingston. He was for twelve years district-attorney of Columbia county, was subsequently elected to the 32d congress, and in 1857 came to New York City, where he entered into partnership with Claudius M. Monell. He was elected a justice of the Supreme Court of the 8th judicial district for six years, to fill the vacancy occasioned by the resignation of Justice Whiting. In 1863 he was re-elected for the full term of eight years. In 1872 he succeeded Judge Bedford, and was for a number of years presiding judge of the Court of General Sessions. From 1879

<sup>1</sup> His standard of life is well set forth in his own words, written on a scrap of paper found in his office desk after his death: "The realization of the ideal life is the great design of God, and the great work of man. The advancement and elevation of humanity is most surely promoted by whatever best and permanently develops the individual man. It is by the enlightened

and disinterested service of his fellow-beings that he most surely strengthens and idealizes his own nature. The hero has here a field of conquest assigned to him, in which he need fear no defeat and will not have to weep over tarnished or dear-bought victory. He is a fellow-worker with God."



until his retirement from active business he practiced law, associated with Francis M. Scott.

In all the positions held by Judge Sutherland he was characterized by the highest integrity and great force of character. Upon his retirement from the bench in 1878 a reception was given him by the members of the New York City bar, at which exceptionally marked tributes of praise were bestowed.

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**TAILER, HENRY A.** (born in New York City in 1833; died there, March 15, 1878), was graduated at Columbia Law School in 1852 at the head of his class. The next two years he visited Europe and studied civil law at the universities of Bonn and Heidelberg, acquiring at the same time a thorough knowledge of the French and German languages and literature. Returning to New York he completed his legal education with the firm of Kent, Eaton & Kent, was admitted to the bar, and upon the death of Mr. Kent became a member of that firm, the name changing to Eaton, Davis & Tailer. Upon the retirement of J. C. Bancroft Davis it became Eaton & Tailer. Aside from his legal attainments, which were of a high order, he was distinguished for refined literary taste and for the purity and integrity of his character.

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**ALCOTT, JOHN L.** (born in western New York; died in Buffalo, January 20, 1887), ranked for many years as one of the most eminent lawyers of the state. He was elected justice of the Supreme Court for the 8th judicial district, November 2, 1869, and served for a term of fourteen years. He was appointed associate-justice of the general term for the 4th department, December 25, 1870, and on November 15, 1881, was chosen presiding judge, occupying that position until his term expired. He passed his subsequent life in retirement from active professional life.

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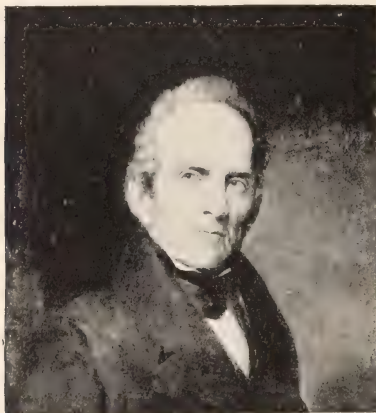
**ALLMADGE, FREDERICK AUGUSTUS** (born in Litchfield, Connecticut, August 29, 1792; died there, September 17, 1869), was a Yale graduate, was prepared for the legal profession at the Litchfield Law School, and came to New York to practice. He served in the boards of aldermen and councilmen, the state senate (becoming president of that body and *ex officio* judge of the Court of Errors), and congress (1847 to 1849). He was recorder of the city from 1841 to 1846, and from 1848 to 1851, and in that office made a memorable record in dealing with the Astor place riots. He was also general superintendent of the metropolitan board of police (1857-62) and clerk of the Court of Appeals (1862-65).



TALLMADGE, JAMES (born in Stanford, Dutchess county, New York, January 28, 1778; died in New York City, September 29, 1853), the son of Colonel James Tallmadge, of the Revolution, was graduated in 1798 at Brown, and after being admitted to the bar was a practitioner in Poughkeepsie and New York City. He was for a while Governor George Clinton's private secretary, and served in congress (1817-19), as lieutenant-governor of New York (1825-26) and as a member of the constitutional conventions of 1821 and 1846. In congress he made a notable speech on the question of Missouri's admission, in which he opposed slavery extension. He was one of the founders of the University of the City of New York, a founder and president of the American Institute and an ardent advocate of protection. His daughter married Philip S. Van Rensselaer.



THOMPSON, SMITH (born in Stanford, Dutchess county, New York, January 17, 1768; died in Poughkeepsie, New York, December 18, 1843), was graduated at Princeton College in 1788, and was a law student under James Kent (afterward chancellor). He was admitted to the bar in 1792, and after practicing in Troy went to Poughkeepsie. He was a delegate to the



*Smith Thompson*

constitutional convention of 1801, and in 1802 became associate-justice of the Supreme Court of the state, having a short time previously declined appointment as attorney for the middle district of New York. While serving on the supreme bench he was selected mayor of the City of New York, but he refused to accept that office. From 1816 to 1818 he was chief-justice of the court. In the latter year he was appointed secretary of the navy by President Monroe. He succeeded, in 1823, Brockholst Livingston as associate-justice

of the Supreme Court of the United States, remaining on that bench for the rest of his life—a period of twenty years.

Justice Thompson holds a high rank in the jurisprudence of his

native state and of the United States. His opinions are especially marked by great learning in the law.

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**T**HROOP, ENOS THOMPSON (born in Johnstown, Montgomery county, New York, August 21, 1784; died at his country residence, Willowbrook, near Auburn, New York, November 1, 1874), was admitted to the bar at Albany in 1806, having received a classical and legal education. Beginning practice at Auburn, he enjoyed professional success, and also became active and prominent in politics. After holding local offices he served part of a term in congress (1815-16), but was defeated for re-election. From 1823 to 1828 he sat on the circuit bench of the state, resigning to become lieutenant-governor, at the solicitation of Martin Van Buren, who at the same time was elected governor. Upon Mr. Van Buren's appointment as secretary of state by President Jackson, Judge Throop succeeded to the governorship. He was re-elected in 1830, but declined another election in 1832. From 1833 to 1838 he was naval officer at the port of New York, and from 1838 to 1842 was *chargé d'affaires* at Naples. Returning to the United States he went into retirement, devoting himself to agricultural pursuits for the remainder of his life.

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**T**HROOP, MONTGOMERY HUNT (born in Auburn, New York, January 26, 1827; died in Albany, New York, September 11, 1892), was a nephew of Governor Throop and a son of George B. Throop, a well-known lawyer and banker. His mother was a sister of Ward Hunt, the distinguished chief-judge of the Court of Appeals and associate-justice of the United States Supreme Court. He attended Geneva (now Hobart) College, but did not complete his course, and soon afterward began the study of law in the office of his uncle, Ward Hunt. After his admission to the bar he practiced for a time at Utica with Mr. Hunt, and then removed to Michigan, but after two years he returned to Utica, forming an association with Roscoe Conkling, which lasted for seven years. He then went to New York City.

In 1870 he was appointed on the commission to revise the laws, from whose labors resulted the present code of civil procedure. He was chairman of this commission until the completion of its work, and was its most active member.

From 1880 until his death he lived in Albany, devoting himself to legal authorship. His published works include "A Treatise on the Validity of Verbal Agreements as Affected by the Legislative Enactments in England and the United States, commonly called Statutes of Frauds" (1876), "The New Revision of the Statutes of New York :

the Code of Remedial Justice, with Explanatory Notes," "The New York Justices' Manual," "Digest of Massachusetts Reports, 1804-86" (1887), and "A Treatise on the Law Relating to Public Offices and Sureties on Official Bonds" (1892).



**TILDEN, SAMUEL JONES** (born in New Lebanon, New York, February 9, 1814; died at his country residence, Greystone, Westchester county, New York, August 4, 1886), was a descendant of Nathaniel Tilden, of Tenterden, England, who emigrated to New England in 1634, settling in Scituate, Massachusetts. Mr. Tilden's father, Elam Tilden, was a farmer, who also carried on a mercantile business and enjoyed the personal friendship of Martin Van Buren. The son at an early age displayed high intellectual qualities, but was very delicate physically, and throughout his life he suffered the disadvantage of a frail constitution. He entered Yale College at the age of seventeen, but in consequence of poor health was obliged to abandon his studies. Later he attended the University of the City of New York and prepared himself for the bar. From the time of his admission (1841) until he attained commanding prominence in public life—a period of more than thirty years—he devoted himself uninterruptedly and with steadily increasing success to his profession. Although he was constantly interested in politics and gave very close attention to the details of party concerns, his distinctive character until the seventies was uniformly that of a lawyer and not of a public man. Indeed, he held none but minor offices in all that time—member of the assembly in 1845 and 1846, delegate to the constitutional convention of 1846 (in which he opposed the programme of an elective judiciary), and, for a time, corporation attorney of the City of New York.

Mr. Tilden soon became a recognized specialist in municipal law and obtained a lucrative practice from contractors. His remarkable mathematical abilities were of great value to him in this variety of practice. He also was highly proficient in conveyancing, noted for his unfailing accuracy. In the celebrated *quo warranto* case of *Giles vs. Flagg* and the suit of the heirs of Doctor Burdell, contesting the claim of Mrs. Cunningham to administer upon the Burdell estate, his consummate skill in dealing with matters of extreme intricacy was strikingly displayed. From 1858 to 1875 he was employed as counsel by many great railway corporations. An especially memorable suit which he successfully conducted was that of the Delaware & Hudson Canal Company *against* the Pennsylvania Coal Company. During the war he was frequently summoned to Washington to consult with Secretary Stanton, who had a very high opinion of his legal accomplishments. Governor Horatio Seymour also frequently sought his professional advice—particularly during the draft riots of 1863. In the half-



dozen years following the close of the war he closely pursued his profession, refusing more retainers than he accepted.

Mr. William Allen Butler, in a brief memorial of Mr. Tilden, speaks as follows of his special character as a lawyer :

Never identified with the general practice of the profession or seeking a large clientage, he became a master of the law as a science and an acknowledged authority in one of its branches most closely allied with the main sources of our national prosperity. Without special forensic ability, he gained, in conspicuous cases, signal victories at the bar. . . . He believed in the potency of definite facts as the best means of producing conviction in the minds of men, and would say that to this end he would rather have one fact than a column of rhetoric. But it was the facts underlying and out of sight and undiscoverable, except by long and patient labor, which seemed especially to attract him and to furnish a kind of native stimulus to his keen perceptions, which he trained for service in the dark. This gave him a rare and, in some respects, an unequalled power. . . . He followed his profession according to an elective method as to the cases he undertook, which would have been fatal to men of less ability. His clients must bide his time for examination and action, and he must have his own way of dealing with the cause. This made him less conversant with the courts than with the consultation-room, and yet, on occasion, as in the famous Burdell case, he was found fully equipped for the active conflicts of the bar.<sup>1</sup>

Mr. Tilden's rise to eminence in political life was the direct sequence of the exercise of his great professional abilities for the purification of the municipal government and the judiciary of the City of New York. He was one of the signers of the circular which led to the organization of the Association of the Bar and delivered a stirring speech at the bar meeting of February 1, 1870.<sup>2</sup> In all the subsequent proceedings against the Tweed ring and the corrupt judges he was one of the most conspicuous and aggressive citizens, and the resulting achievement was in large measure his individual performance. In 1871 he accepted an election to the assembly for the express purpose of carrying forward the impeachment proceedings against Judges Barnard, Cardozo and McCunn.

In 1874 he was elected governor of New York over John A. Dix by a majority of 50,000. In that office he chiefly distinguished himself by his policy of correcting abuses and corruption in the management of the state canals. He was nominated for president in 1876 by the democratic party. The canvass resulted in a disputed election, which, as finally adjudicated by the extra-constitutional electoral commission, gave Mr. Tilden 184 electoral votes to 185 for Mr. Hayes. Afterward he lived in retirement, though continuing to manifest a dignified interest in important public affairs. He left in his will the greater part of his large fortune for the creation of a free public library—a bequest that became a matter of active litigation in the state courts.

<sup>1</sup> Annual Report of the Association of the Bar of the City of New York, 1887.

<sup>2</sup> See p. 196 of this volume.



ILLMAN, SAMUEL DYER (born in Utica, New York, April 1, 1815; died in New York City, September 4, 1875), was admitted to the bar in Canandaigua, New York, after his graduation from Union College. He practiced for sixteen years in Seneca Falls, and then retired from the legal profession and removed to New York. There he devoted himself to scientific pursuits in connection with the American Institute. He invented several valuable scientific appliances, and wrote essays on technical subjects.



OMPKINS, DANIEL D. (born in Fox Meadows, now Scarsdale, Westchester county, New York, June 21, 1774; died on Staten Island, June 11, 1825), was the son of Jonathan G. Tompkins, a farmer. After being graduated at Columbia College (1795) he fitted himself for the law. He was admitted to the bar in 1797, and soon took rank with the able practitioners of New



*Daniel D. Tompkins*

York City. He also speedily became a leading man in the politics of the day, devoted to the anti-federalist party. He was a member of the state constitutional convention of 1801, and in 1804 was chosen a representative in congress, but he resigned that office to become an associate justice of the Supreme Court of the state. This position he likewise resigned, having been nominated for governor. He was elected (1807), and four times re-elected, serving until January, 1817, when he retired to assume the duties of vice-president of the United States. His last official act as governor was a message to the legislature recommending the fixing of a day for the abolition of slavery, and that body accordingly appointed the 4th of

July, 1827. In 1820 he was once more elected vice-president. In 1821 he sat in the state constitutional convention. The closing years of his life were clouded by charges reflecting upon his integrity in office.



**TRACY, ALBERT HALLER** (born in Norwich, Connecticut, June 17, 1793; died in Buffalo, New York, September 12, 1859), was the son of Phineas Lyman Tracy, a prominent lawyer and public man of Batavia, New York. The son at first studied for the medical profession, but afterward chose a legal career, being admitted to the bar in 1815, and beginning practice in Buffalo. He served with ability in congress for six years from 1819, and in the state senate for the same number of years, being elected to the latter body in 1830. As a state senator he was a member of the court of final jurisdiction, and the opinions and decisions that he delivered in that capacity enjoy specially high reputation in the legal literature of the state.



**TRACY, CHARLES** (born in Whitestown, Oneida county, New York, February 17, 1810; died in New York City, June 1, 1885), was a son of William Gedney Tracy, a Whitestown merchant. He was prepared for college at Partridge's Military Academy, was graduated at Yale in 1832, and studied law under Henry R. Storrs and Henry A. Foster. Being admitted to the bar, he practiced in Utica until 1849, when he removed to New York, where, after a brief partnership with Edwin C. Litchfield, he formed an association with W. Howard Wait and Dwight H. Olmstead.

In his career of forty years at the metropolitan bar, Mr. Tracy was employed largely in corporation business, especially as counsel for railway companies. He was attorney for the Chicago, Rock Island & Pacific Railroad, the Union Pacific, and many others, as also for the United States Mortgage Company. He was regarded as one of the very ablest members of the profession. He was a man of literary tastes and scholarly refinement, and, although never actively engaged in public life, was earnestly devoted to the cause of good government. He was one of the founders of the Association of the Bar.

His brother, William Tracy, was also an able and well-known lawyer, for a time associated with him professionally.



**TRACY, JEREMIAH EVARTS**, son of Ebenezer Carter Tracy and Martha Sherman Evarts,<sup>1</sup> was born in Windsor, Vermont, January 31, 1835. He is of an old New England family, being sixth in lineal descent from Stephen Tracy<sup>2</sup> who came in the ship *Ann* from England to Plymouth, Massachusetts, in 1623.

<sup>1</sup> Martha Sherman Evarts was a daughter of Jeremiah Evarts and Mehitabel Sherman, and a granddaughter of Roger Sherman, who, among the patriots of the revolutionary period, has the unique distinction of having been the only signer of all four of the great national compacts, to wit: the association of 1774, the declaration of independence, the articles of confederation, and the constitution of the United States.

<sup>2</sup>As follows: Stephen, as above; John<sup>2</sup>, who married Mary Prence, a daughter of Thomas Prence, who came from England in the ship *Fortune* in 1621, and afterward became governor of Plymouth colony; Stephen (3d)<sup>3</sup>; Thomas<sup>4</sup>; Joseph<sup>5</sup>; Ebenezer Carter<sup>6</sup>; Jeremiah Evarts<sup>7</sup>.

Mr. Tracy's father was the founder, editor and publisher of the *Vermont Chronicle*, a religious newspaper of extensive influence throughout the state, which he conducted for more than thirty years, and until his death (May 15, 1862). His mother died April 10, 1889. Mr. Tracy is one of eight children, three of whom have died, one in infancy, and another, Martha Day, at the age of nineteen—the third, William Carter, an officer in the union army, being killed in the war of the rebellion. He has living one sister, Anna, wife of Reverend George P. Byington, a clergyman settled in Vermont, and three brothers, Roger Sherman, a physician, now registrar of records of the department of health in New York City, John Jay, a lawyer in Tennessee, and Charles Walker, who is in business in Portland, Oregon.

Jeremiah Evarts Tracy received his early education in his native state, Vermont. At an early age he began the study of the law in the office of his uncle, William M. Evarts, in the City of New York, and having continued his studies in New Haven, Connecticut, he received from Yale College the degree of LL.B. in 1857, having previously, in 1856, been admitted to the bar in New York a few days after attaining his majority.

Upon leaving New Haven he became an assistant in the office of Mr. Evarts, and on June 1, 1859, he was admitted to partnership with him in the practice of the law. This partnership with Mr. Evarts and others has ever since continued—the present firm (1897) being known as Evarts, Choate & Beaman, and consisting of William M. Evarts, Joseph H. Choate, Charles C. Beaman, J. Evarts Tracy, Treadwell Cleveland, Prescott Hall Butler and Allen W. Evarts.

Mr. Tracy was married September 30, 1863, to Miss Martha Sherman Greene, and has nine children, Emily Baldwin, Howard Crosby (a lawyer practicing in New York City), Evarts (an architect in New York City), Mary Evarts, Margaret Louisa, Robert Storer (who has recently been graduated from the College of Physicians and Surgeons in New York and is now an assistant on the surgical side in the New York Hospital), Edith Hastings, Martha (now a student in Bryn Mawr College), and William Evarts (now a student in Yale College).

In 1874 Mr. Tracy removed his residence from New York to Plainfield, New Jersey, which has since been his home. While continuing the practice of the law in the City of New York he has not failed to manifest interest in the affairs of Plainfield. He has served at different times as a member and as president of the common council of the city, and has been for many years one of the directors of the Plainfield Public Library and one of the governors of Muhlenberg Hospital, located there.

He is a member of the New York City and State Bar Associations, of the committee of counsel of the Lawyers' Title Insurance Company of New York, of the Yale Alumni Society and of the New York Law Institute.



He is also a member of the military order of the Loyal Legion of the United States and of the Empire State Society of the Sons of the American Revolution.



**REDWELL, THOMAS** (born in Smithtown, Long Island, in 1742; died in Plattsburg, New York, January 30, 1832), was a prominent New York State politician and lawyer of his time. He was an original proprietor of Plattsburg, was a member of the early provincial congresses (being one of the framers of the state constitution), was a delegate to the state convention of 1788 that ratified the federal constitution, sat in the state constitutional convention of 1801, was a judge of probate and a surrogate of Suffolk county and also of Clinton county, and served in both the assembly and the senate of the state.

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**REMAIN, LYMAN** (born in Durham, Greene county, New York, June 14, 1819; died in New York City, November 30, 1878), was admitted to practice law in 1840. He held local offices in his native county, including those of district-attorney and surrogate, and later removed to Albany and from there to New York City. He was elected attorney-general of the state in 1858, and served in the assembly (1866-68) and in congress (1873-75).

His son, Grenville Tremain (born in Durham, Greene county, New York, April 19, 1845; died in New York City, March 14, 1878), inherited his legal abilities, became a member of the firm of Peckham & Tremain, in Albany, was the republican candidate for attorney-general in 1877, and had the promise of a very eminent career at the bar at the time of his early and sudden death.

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**ROUP, ROBERT** (born in New York City in 1757; died there, January 14, 1832), was graduated at Columbia College in 1774 and began the study of law under John Jay, but discontinued it to enter the revolutionary army, in which he served with distinction. From February, 1778, until 1779 he was secretary of the board of war by the appointment of congress. He finished his professional studies with Judge William Patterson, of New Jersey. For a number of years he was judge of the United States District Court of New York. In politics he was an adherent of Alexander Hamilton, whose personal friendship he enjoyed.

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**UDOR, JOHN**, was one of the earliest of the English colonial lawyers, and was recorder of the City of New York from 1704 to 1710. He practiced for many years in the Mayor's Court, upon whose records his name frequently appears. He died in 1715.



ULSHOEFFER, MICHAEL (born in New York City, March 30, 1793; died there, September 6, 1881), was the son of George Ulshoefffer, a native of the margravate of Anspach and Bayreuth, who during the American Revolution was forced into the British service and subsequently became a citizen of the republic. The son, after studying in the office of T. W. Smith, was admitted to the bar in 1813. He soon obtained a recognized position in the profession. From 1818 to 1822 he served in the assembly. In that body he was a champion of the bill to revise the state constitution, and wrote a very able reply to Chancellor Kent's opinion disapproving the measure.<sup>1</sup> He became corporation-attorney in 1821, and corporation-counsel in 1825, occupying the latter office until 1829.

He was appointed judge of the Court of Common Pleas in 1834, reappointed in 1843, and elected a member of that bench in 1846, under the new constitution. He retired at the end of 1849, and afterward, although he did not resume his practice, was frequently selected as a referee and arbitrator. He continued a prominent citizen for many years.



UPTON, FRANCIS HENRY (born in Salem, Massachusetts, May 25, 1814; died in New York City, June 25, 1876), was descended from John Upton, one of the very early settlers of New England. He took the legal course at Harvard, graduating from the law school in 1835, and, establishing himself in New York, gained professional prominence. He wrote several important legal works, including "A Treatise on the Law of Trade Marks" (1860), and "The Law of Nations Affecting Commerce during War" (1863). In the war he was counsel for captors in prize courts.



VAN BUREN, JOHN (born in Hudson, Columbia county, New York, January 18, 1810; died on shipboard in October, 1866), was the son of Martin Van Buren. He was educated at Kinderhook Academy and Yale College, graduating from the latter in 1828. He then entered the law office of Benjamin F. Butler, where he proved an apt pupil and of valuable service to his preceptor. His legal studies were interrupted by the appointment of his father as minister to the British court and his own selection as secretary to the legation, having previously, in September, 1830, been admitted to the bar. He passed part of the years 1831 and 1832 in London, becoming especially popular from his winning ways in fashionable society. At a court ball he danced with the Princess Victoria, a circumstance which fastened upon him his popular title of "Prince John."

In 1832 he opened an office in Albany under fortunate circum-

<sup>1</sup> See p. 125 of this volume.



*S. F. B. M.*





stances and influences that soon led to very successful practice even at a bar noted for its learning and brilliancy. Among his early cases were *Johnson vs. Hurst* (11 Wendell, 137), in which he succeeded against the veteran Marcus T. Reynolds; *Feeter vs. Keats* (11 Wendell, 47), which terminated in the Court of Errors; *Hoyt vs. Blair* (12 Wendell, 196), and *Olney vs. Devoe* (Id., 228). He was one of the counsel associated with the attorney-general in the celebrated case of *People, on the relation of George Tibbets, vs. Canal Commissioner* (13 Wendell, 335). He prepared the brief for the plaintiff in the great case of *Carter vs. Lorillard*, which after a long contest was finally decided in the Court of Errors. He continued his practice at the Albany bar until 1836, when, after a brief period at Washington, he removed to New York City. On February 3, 1845, he was elected by the state legislature attorney general. In that office he tried many important cases for the state. Among them was the case of *Doctor Boughton*, or "Big Thunder," the leader of the anti-renters, during which an altercation between Van Buren and the opposing lawyer resulted in the jailing of both of them for twenty-four hours. Other cases were those of *Henry Wyatt*, indicted and tried for an atrocious murder in Auburn prison, and of the negro *Freeman*, for the murder of the Van Ness family. In both these cases Mr. Van Buren was opposed by William H. Seward, and the widest interest was excited in the great legal contests waged. Wyatt was convicted and executed, and Freeman was convicted and sentenced, but got a new trial, dying while it was pending. In the protracted *Forrest* divorce case, commencing in December, 1851, Mr. Van Buren met Charles O'Connor as an opponent, and though defeated added greatly to his legal renown. Daniel Lord, who listened to the final argument in the Court of Appeals, said: "I can say of Van Buren as a speaker at the bar, as Judge Story said of William Pinckney, 'He possesses, beyond any man I ever knew, the power of eloquent, illustrative amplification, united with close, flexible logic.'"

Mr. Van Buren continued his practice at the bar, with increasing reputation, until soon before his death. The political field had but little attraction for him. Except in the memorable contests between the barnburners and hunkers, in 1847-48, he took no active part in politics. Early in 1866, his health being greatly impaired, he visited Europe for change of climate. Failing of relief, in October following he embarked on the steamer *Scotia* for home. He died during the voyage.



AN BUREN, MARTIN, eighth president of the United States (born in Kinderhook, Columbia county, New York, December 5, 1782; died there, July 24, 1862), was the son of a farmer, Abraham Van Buren. He received but slight education, and at fourteen entered the office of Francis Sylvester, a rural practitioner of the law. As a youth he manifested great perseverance and

intelligence in mastering the principles and practice of the profession. At the age of twenty he became a student under William P. Van Ness in the City of New York, and being admitted to the bar in the next year (1803) he returned to his native town and formed a professional association with a step-brother. He very soon made his influence felt, both as a lawyer and in politics. His progress to political distinction of the first order was gradual, and meantime he built up a very substantial reputation in the line of his profession. He was surrogate of Columbia county from 1808 to 1813, was a member of the Court of Errors during his service as state senator (1813 to 1816), and was attorney-general of the state for four years from 1815. In 1817 he established a law firm in Albany with Benjamin F. Butler, who had been his pupil. Mr. William Allen Butler, son of Benjamin F. Butler, writing of this association, says of Mr. Van Buren as a lawyer :

Mr. Van Buren's standing and repute as a lawyer were greater than is generally supposed. His later conspicuous career, culminating in the presidency, has obscured his early brilliant record as a lawyer. In fact, he was, during his active practice and until his exclusive devotion to public affairs, at the very front of the bar, succeeding Abraham Van Vechten and preceding Thomas J. Oakley as attorney-general of the state at a time when leadership in the profession was an essential qualification for the place, and competing in forensic struggles with the ablest advocates. The terse and frank admission of his great rival, Elisha Williams, the incomparable jury lawyer of his time, that while he got all the verdicts, Van Buren got all the judgments, was only a fair tribute to his ascendancy.<sup>1</sup>

In a work devoted specially to the history and the notable characters of the New York bar and bench, it is not possible, within the limited space, to even fairly epitomize the general aspects of the lives of the numerous great public men who have adorned the legal profession in this state. It must suffice to merely summarize the leading subsequent events of Mr. Van Buren's career.

He was elected United States senator from New York on February 6, 1821, and re-elected in 1827, but, being chosen governor the next year, resigned his seat. Early in 1829 he resigned as governor to become secretary of state in the Jackson administration. In 1831 he went to England as United States minister, but when the senate met it refused to confirm him in that position. Returning, he was elected vice-president in 1832. In 1836 he was chosen president to succeed Jackson, but he was beaten by General Harrison when a candidate for re-election in 1840. He was the presidential candidate of the free-soil democrats in 1848, but received no electoral votes.



AN CORTLANDT, STEPHANUS (born in New York City—then New Amsterdam—May 4, 1643; died there, November 25, 1700), was a son of Oloff Van Cortlandt, founder of the family, who came to America in 1638, in the service of the Dutch West India Company, and was very prominent in the affairs

<sup>1</sup> "The Revision and the Revisers" (New York and Albany, 1889), p. 15.

of New Amsterdam. Stephannus was the first and only lord of Van Cortlandt manor, to which dignity his estate was elevated by letters patent of William III., dated June 17, 1697. He was probably the most distinguished and able New Yorker of the seventeenth century, and he filled nearly every important office in the colony except that of governor. At the time of the surrender of New Amsterdam to the English, in 1664, he was just completing his twenty-first year, and he immediately rose to prominence under the new régime.

Although a merchant, he early filled leading judicial positions. He was appointed a member of the Court of Assizes, created upon the promulgation of the "Duke's laws." He also served as judge of admiralty, judge of the common pleas of Kings county, and, for a brief time previously to his death, justice of the provincial Supreme Court. He became mayor of New York in 1677, being the first native American to hold that



VAN CORTLANDT MANSION, KINGSBRIDGE.

office, and he was again mayor in 1686 and 1687. In all his numerous public employments he enjoyed the confidence of the governors and the home administration in England. He erected a residence on the northern shore of Croton bay, which is one of the most venerable and most famous houses now standing upon the borders of the Hudson river.



ANDERPOEL, AARON (born in Kinderhook, New York, February 5, 1799; died in New York City, July 18, 1871), was admitted to the bar, and after serving several terms in congress (1826-30, 1833-37 and 1839-41) removed from Kinderhook to New York City, where for eight years from 1842 he was a justice of the Superior Court.



ANDERPOEL, AARON J. (born in Kinderhook, New York, August 18, 1825; died in Paris, France, August 23, 1887), was a nephew of the preceding and a son of Doctor John Vanderpoel, a successful physician. He was graduated in 1843 at the University of the City of New York, and began the study of law at Kinderhook, completing his preparation in the office of

William Curtis Noyes. After two years of practice at the Columbia county bar he removed to New York (1848) and formed an association with J. Bryce Smith. He was afterward in partnership with Augustus L. Brown and A. Oakey Hall, in the firm of Brown, Hall & Vanderpoel (founded in 1853), which continued for twenty years, being succeeded by Vanderpoel, Green & Cuming.

Mr. Vanderpoel's entire energies were devoted to the enormous business of these two great firms. He steadfastly refused to be a candidate for office, and even the proffer of a nomination to the bench of the Court of Appeals (1885) could not tempt him to relinquish his professional practice. He was equally able and successful as an advocate and a consulting counsel. It is said that he tried more causes before juries than any other lawyer of his time. His conduct of a suit at *nisi prius* was characterized by tact and sound judgment—by clearness and conciseness in stating facts, and strong logic in supporting them. He wholly lacked the oratorical arts. In consultation he promptly grasped all that was important and material in a case, and was remarkably judicious in determining its best possible presentation.



AN NESS, WILLIAM PETER (born in Ghent, New York, in 1778; died in New York City, September 6, 1826), was a friend and partisan of Aaron Burr, being his second in the duel with Hamilton, and was prominent at the New York bar, and as a judge, during the first quarter of the nineteenth century. He was graduated in 1797 at Columbia College. From 1812 until his death he was judge of the United States District Court for southern New York. He wrote a pamphlet in vindication of Burr (1803), and published also "Laws of New York, with Notes" (2 vols., 1813), and "Reports of Two Cases in the Prize Court for New York District" (1814).

His brother, Cornelius Peter Van Ness, was an eminent jurist of Vermont, became chief-justice and governor of that state, and was United States minister to Spain from 1829 to 1837. Later (1844-45) he was collector of the port of New York.



AN NESS, WILLIAM W. (born in Claverack, New York, in 1776; died in Charleston, South Carolina, February 27, 1823), a cousin of the preceding, after practicing at Claverack and Hudson, was appointed in 1807 justice of the state Supreme Court. The legislature, in 1820, tried him on the charge of using his office to obtain the charter of the American bank, and, although a verdict of acquittal was rendered, he was removed in 1822. He was a federalist leader and had a reputation for great ability and shrewdness.





AN SCHLAACK, PETER (born in Kinderhook, New York, in March, 1747; died there, September 17, 1832), one of the most famous lawyers of the last part of the eighteenth century and first part of the nineteenth, was descended from an old Dutch family. After his graduation at King's College (now Columbia) in 1768, he prepared for the bar in the office of the elder William Smith. In 1772 he was appointed to revise the colonial statutes.<sup>1</sup> Being a loyalist, he was placed under restraint early in the Revolution, and in 1778 was banished to England. Returning in 1785 he received a hearty welcome from the bar, and until his death was a very prominent legal character. He conducted a law school, educating many young men for the profession. In 1773 he published, in two volumes, "*Laws of the Colony of New York*," and in 1778 "*Conductor Generalis*, or the Duty and Authority of Justices, Sheriffs, Constables, etc."

His son, Henry Cruger Van Schaack (born in Kinderhook, April 3, 1802; died in Manlius, New York, December 16, 1887), was also a prominent lawyer. He published the "*Life, Journal, Diary and Letters*" of his father, and left a highly valuable collection of old manuscripts and autographs.



AN VECHTEN, ABRAHAM (born in Catskill, New York, December 5, 1762; died in Albany, January 6, 1837), was the first lawyer admitted to the bar under the state constitution of 1777. His legal preceptor was John Lansing. He engaged in practice at Johnstown. He held local offices there, was a state senator and assemblyman and regent of the state university, and served as attorney-general of the state in 1810 and from 1813 to 1815. Governor Jay offered him a place on the supreme bench, which he declined.



AN VORST, HOOPER C. (born in Schenectady, New York, December 3, 1817; died in New York City, October 26, 1889), was graduated at Union College in 1839 and was admitted to the bar at Albany. He was attorney and counsel to that city for a number of years, and in 1853 removed to New York City. There he acquired a large practice. He was appointed judge of the Court of Common Pleas in 1868, and in 1871 was elected to the bench of the Superior Court for a term of fourteen years. He also served as presiding justice of the Supreme Court by the governor's appointment. He was a vice-president of the Association of the Bar. He stood high as a judge.

<sup>1</sup> See p. 108 of this volume.



AN WINKLE, EDGAR S. (born in New York City, August 3, 1810; died there, December 9, 1882), was the son of Peter Van Winkle, a prominent merchant. He studied law in the office of John P. Jackson, of Newark, New Jersey, and afterward under William Slosson, of New York, and was admitted to the bar in 1831. For fifty years he was a practitioner at the New York bar. He early became prominent as counsel for large moneyed corporations. When Daniel Webster resolved to remove to New York and practice law in that city he chose Mr. Van Winkle as his associate.

He was a conspicuous member of the Bar Association, presided at the meeting by which it was organized (February, 1870), and was its first vice-president.



ARICK, RICHARD (born in Hackensack, New Jersey, March 25, 1753; died in Jersey City, July 30, 1831), engaged in the practice of the law in New York shortly before the beginning of the Revolution, but abandoned it to serve in the army. He was, successively, military secretary to General Philip Schuyler, aide-de-camp to General Benedict Arnold, and a member of Washing-

*City of New York }  
 To Daniel Chipman Treas.  
 By the Corporation of the United German  
 Lutheran Church ninety four Dollars too for  
 the use of their Charity School  
 By order of the }  
 Common Council }  
 Rob<sup>t</sup> Benson Clk  
 Dated this 17<sup>th</sup> May 1800  
 Wm. Varick Mayr*

DOCUMENT AND SIGNATURE BY RICHARD VARICK.

ton's staff. He served as recorder of the City of New York from 1783 to 1789, and as mayor from 1791 to 1801. He was appointed in 1786, with Samuel Jones, to revise the laws of the state. He was one of the founders of the American Bible Society and succeeded John Jay as its president.



ERPLANCK, GULIAN CROMMELIN (born in New York City, August 6, 1786; died there, March 18, 1870), although best known as a scholar, editor and writer, was eminent at the bar of New York, to which he was admitted soon after his graduation from Columbia College. He was also active in politics,

served in congress (1825-33), and for many years was president of the board of commissioners of immigration.

His father, Daniel Crommelin Verplanck, was a prominent citizen of Dutchess county, which he represented in congress from 1803 to 1809, and of whose Common Pleas court he was judge from 1828 to 1830. Gulian's cousin, Isaac A., was a distinguished jurist of western New York, being judge of the Superior Court of Buffalo for two terms and acting for a period as its chief-justice.

*G. L. Verplanck*



VERPLANCK, JOHN L. (born in Washington county, New York, June 6, 1788; died in Albany, New York, October 19, 1832), was admitted to the bar in 1812 and became a leading practitioner of the counties of Washington, Rensselaer, Saratoga, and Albany. As a member of the state senate he actively supported the Erie canal measures, and, becoming a judge of the Court of Errors, delivered a series of noteworthy opinions, which may be found in Cowen's Reports.



WAIT, WILLIAM (born in Ephratah, New York, February 2, 1821; died in Johnstown, New York, December 29, 1880), being admitted to the bar in 1846, soon became prominent in the profession, and in 1848 was chosen district-attorney of Fulton county. Devoting himself to legal writing, he published a variety of works of high authority, including the following: "The Law and Practice in Civil Actions and Proceedings in Justices' Courts and on Appeals to the County Courts in the State of New York" (2 vols., 1865), "New York Annotated Code of Procedure" (1871), "A Table of Cases Affirmed, Revised or Cited in the Reports of the State of New York" (1872), "The Practice in Courts of Record of the State of New York" (1872), and "Wait's Actions and Defences at Law and in Equity" (7 vols., 1876-79). He also edited editions of standard legal works.



WALKER, STEPHEN AMBROSE (born in Brattleboro, Vermont, in 1836; died in New York City, February 5, 1893) was graduated with first honors at Middlebury College, Vermont, in 1858, and studied law in the office of Daniel S. Dickinson, at Binghamton, New York, being admitted to the bar in 1861. During the war he was an army paymaster. Engaging in practice in New York City in 1865, he gradually advanced to an important position in the profession, and was retained in numerous celebrated litigations. He was counsel for the estate of Bomanjee Byramjee Colah, the unfortunate Parsee merchant, and was retained by various large companies and corporations. In 1881 he was an unsuccessful candidate for surro-

gate, receiving the endorsement of the Bar Association. From 1886 to 1889 he was United States district-attorney. He was one of the executors selected by Samuel J. Tilden to constitute the board of trustees of the Tilden Trust.



**WALWORTH, REUBEN HYDE** (born in Bozrah, Connecticut, October 26, 1788; died in Saratoga Springs, New York, November 27, 1867), the last chancellor of the State of New York, was descended from William Walworth, a member of an old English family, who emigrated to America in 1671. Reuben H. entered upon the study of law in Troy, New York, at the age of seventeen, and was admitted to the bar in 1809. He began practice at Plattsburg the next year, and soon was regarded as one of the best lawyers of that part of the state, becoming a master in chancery and a county judge in a brief time. He served a term in congress (1821-23), was judge of the 4th judicial district from 1823 to 1828, and in the latter year was appointed chancellor, retaining that office until its abolition under the constitution of 1846.

Chancellor Walworth (says a biographical writer) may justly be regarded as the great artisan of our equity laws. In some sense he was the Bentham of America, without the bold speculations and fantastical theories which, to a certain extent, characterized the great British jurist. What Bentham did in removing defects in English jurisprudence, Walworth did in renovating and simplifying the equity laws of the United States. Justice Story pronounced him "the greatest equity jurist living." Before his day the Court of Chancery in New York State was a tribunal of ill-defined powers and uncertain jurisdiction—in a measure subservient to the English Court of Chancery in its procedure. Chancellor Walworth abolished much of that subtlety, many of those prolix and bewildering formalities which had their origin in the middle ages. He reduced the practice of his court to standard rules, which he prepared with great industry. These rules greatly improved the old system of equity practice, and though he has been charged with thus complicating the Court of Chancery with expensive machinery, it cannot be gainsaid that with Chancellor Walworth equity was the soul and spirit of the law, "creating positive and defining rational law, flexible in its nature and suited to the fortunes, cases, and reciprocal obligations of men." The contents of fourteen volumes of Paige and Barbour's Chancery Reports, containing the adjudications in his own court, and a large part of the matter of the thirty-eight volumes of Wendell, Hill and Denio's Reports, consisting of the opinions he pronounced in the Court of Errors, attest his vast judicial labors.<sup>1</sup>



**WATERBURY, NELSON JARVIS** (born in New York City, July 9, 1819; died there, April 22, 1894), was the son of Colonel Jonathan Waterbury, a highly esteemed citizen of New York, who died in 1829 at the early age of thirty-one. His mother was Elizabeth Jarvis, daughter of Elijah Jarvis and Betsey Chapman, who was a daughter of Doctor Chapman, a distinguished physician of Norwalk, Connecticut. After receiving an elementary edu-

<sup>1</sup> Appleton's "Cyclopedic of American Biography."



education he began the study of law in the office of Wells & Van Wageningen, of New York, a firm of reputation at that early day. He was admitted to the bar as an attorney by the Supreme Court, then consisting of three judges, Samuel Nelson being chief-justice. While in Albany to obtain license as counsellor his name was erroneously and without his knowledge included in the list for justice of the Marine Court. The fact that he was not a candidate did not stop the course of events, and the governor, Silas Wright, having had personal opportunity of observing the capacity and usefulness of the young lawyer, gave to the suggestion his cordial approval. Mr. Waterbury was thus elevated immediately on his admission as counsellor to the bench of a court which had been graced by many distinguished lawyers. Though still a youth, he made one of the best, most respected and most useful judges that ever presided in that important court, though of minor jurisdiction. The judicial character of his mind, his analytical, logical power, his quickness of apprehension and conscientious good judgment singularly qualified him for the office, which he held for four years.

On his retirement, in 1849, Judge Waterbury pursued the modest career of a young lawyer with a practice yet to make and with qualifications for success more solid than showy. He, however, very speedily drifted into politics, and proved himself a born organizer, occupying at a very early day a unique position among the democratic leaders of the period. Possessing a remarkable memory, and fond of statistics, he was familiar with the figures of past elections, not only in states and cities, but also in counties and wards; so that in election times he was invaluable in helping to the earliest judgment of results. In New York, the city of his residence, he always took a most serviceable part, organization being at once his *forte* and his delight. In 1853 the common council of New York City had become so corrupt that a committee was organized for the purpose of securing municipal reform by the passing of a series of amendments to the city charter, to be submitted to a popular vote before taking effect. Judge Waterbury was requested to prepare a plan and direct the campaign. When the caucus of the common council learned that the plan of operation was to be conducted by him they abandoned any attempt to defeat the amendments, which were adopted by a majority of 30,000 votes. In 1851 he was nominated to represent his ward in the board of education, and although he declined the honor was nevertheless elected. The service was wholly gratuitous, and involved much labor and sacrifice of time, but was performed with a zeal and thoroughness which he ever evinced when duty was involved. In 1853 Judge Waterbury, with great reluctance, accepted the position of assistant-postmaster of New York, and he instituted a series of reforms in the delivery and collecting systems which aided greatly in the efficiency with which the work was performed and added materially to the postal revenues.

In 1858 the leading men of his party turned to Judge Waterbury as

their candidate for the office of district-attorney of New York, to which he was triumphantly elected, and in a few months he had won the entire confidence of the community. In this office he brought to bear quickness of perception, a remarkable memory for facts and faculty for co-ordinating them, firmness of purpose, conscientiousness, and intense earnestness; a combination of qualities that insured success. When the news reached New York of the firing on Fort Sumter in April, 1861, Judge Waterbury was selected by the democratic general committee of the City of New York to draft an expression of its sentiments, and his clear, strong and patriotic resolutions were adopted with enthusiasm, and were greatly effective in giving hope and courage to the upholders of the union everywhere as an authentic declaration of the opinion of the mass of the democratic party in their great stronghold. In the fall of 1862 he was nominated for congress by all of the three organizations into which his party was at that time divided. His election was certain, but the interests of his party prompted his withdrawal in favor of Honorable James Brooks, editor of the *Express*. He was several times after that event asked to become a candidate, but felt constrained to adhere to his profession, though he accepted the appointment of judge-advocate-general in the staff of Governor Horatio Seymour.

Judge Waterbury was elected grand sashem or presiding officer of the Tammany Society in May, 1862, and served one year. At the close of 1863 he retired from the Tammany general committee, and was ever after an unyielding adversary of the virtual domination of "Tammany Hall" over the democracy of New York. Such a man necessarily made many formidable political enemies, but they respected as well as dreaded him even on the field of irreconcilable conflict.

In 1871 Governor Hoffman appointed Judge Waterbury one of three commissioners to revise the statutes of the state, one of the highest tributes paid a lawyer and a public man, but he was constrained to resign the office after a futile effort to harmonize the conflicting elements in the commission.

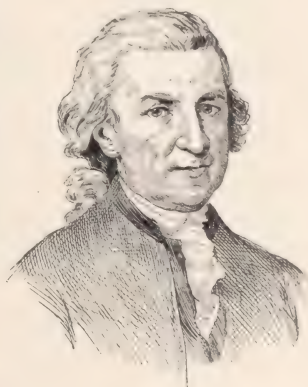
This sketch does not approach the nature of a biography of its subject, but is a brief *résumé* of his life, many points in his character being of necessity omitted.

Judge Waterbury early in life married a Miss Gibson, whose parents resided in Boston, Massachusetts. Their children are three daughters and a son, Nelson J., an attorney in New York City.



WATTS, JOHN, Junior (born in New York City, August 27 [O. S.], 1749; died September 3 [N. S.], 1836), was a jurist, prominent in official life, a philanthropist, and one of the most eminent citizens of New York during the revolutionary period and the first quarter of the present century.<sup>1</sup> His family, of distinguished Scotch lineage, were for many generations prominent lawyers and jurists of Edinburgh, their seat, Rose Hill, being adjacent to that city, and now forming a part of it. Honorable Adam Watt was in 1661 appointed "writer to His Majesty's signet," the highest grade of solicitor, and also held the judicial office of commissary of Kirkeudbright, having jurisdiction in divorce cases. His son, Honorable John Watt, of Rose Hill, a stately mansion still standing within the century, with envying gardens and lawns, was also an eminent lawyer, and in 1696 was holding the important office of commissioner of supply for the shire of Edinburgh. He was succeeded in this office by his eldest son, Honorable Adam Watt, in 1704; while another son, Robert Watt, or Watts (the grandfather of John Watts, Junior), emigrated to the Colony of New York near the close of the eighteenth century, and became the founder of the American branch of the family, the only direct line of descent now in existence. One of their sisters became Lady Riddell, wife of the baronet, Sir Walter Riddell, who dated his title back to the reign of David, first king of Scotland, in the twelfth century.

Robert Watts added a final letter *s* in writing his name, and this custom was perpetuated by his children. About the year 1706 he married Mary, eldest daughter of Honorable William Nicolls (of Islip manor, Long Island), eminent as a lawyer and statesman,<sup>2</sup> and of his wife, widow Van Rensselaer.



JOHN WATTS, SENIOR.

<sup>1</sup> The chapter on "Society in the Early Days of the Republic" in the "Memorial History of New York," contains the following mention of the social leaders of New York City, at that time the capital of the United States: "The bar of New York shall be noticed first. It gave to the salons of the day an array of names never since surpassed in our juridical history: James Duane, Richard Harrison, Aaron Burr, Alexander Hamilton, Morgan Lewis, Robert Troup, Robert R. Livingston, Egbert Benson, John Watts, Gouverneur Morris, Richard Varick, John Lansing, Josiah Ogden Hoffman and James Kent. At various times they appeared under the hospitable roof of the Jays, and in turn met

at the tables of other dignitaries of their own or other professions." \* Again: "Prominent upon Mrs. Jay's list are, of course, the names of the old New York families—the Bayards, the Beekmans, the Crugers, the de Peysters, the Livingstons, the Morrisies, the Schuylers, the Van Hornes, the Van Cortlandts, the Van Rensselaers, the Verplancks, the Wattses." †

\* Vol. iii., pp. 93-4.

† Ibid., p. 101.

<sup>2</sup> It is a curious fact that Judge Nicolls dropped the final letter *s* from his name about the same time that his son-in-law, Watts, added it to his.

and granddaughter of Honorable Matthias Nicolls, secretary of the Colony of New York. Robert Watts and Mary Nicolls had three daughters, two of whom died early, and one son, James Watts, Senior. After some years Mr. Robert Watts crossed over with his family to Edinburgh, expecting to remain there permanently, but the death of his two daughters about 1724 moved him to return to New York. Here he died, September 21, 1750, at the age of seventy-two.

His only son, John Watts, Senior, was born in New York, April 5, 1715, and died, impoverished, an exile in Wales, having been expatriated and his magnificent estate confiscated on account of his loyalty to the king; while his wife, the beautiful Ann de Lancey (whom he married in July, 1742), died of a broken heart.<sup>1</sup> According



MRS. JOHN WATTS, SENIOR  
(Née Ann de Lancey).

to a memorandum by his own hand, she "died 3d July, 1775, two months after I sailed for England—having embarked in the Charlotte packet, 4th May, and left the light-house at 7 in the morning of the day following, with a heavy heart, foreseeing the distresses which were hanging over us." This gifted lady was the daughter of Stephen de Lancey (a protestant gentleman driven from Caen, Normandy, by religious persecution, and the first lord of the de Lancey manor, north of New York) and his wife Ann, daughter of Stephanus Van Cortlandt, first lord of Cortlandt manor.

It was the official prominence of John Watts, Senior, in the service of the king in the colony, which made him the object of political persecution. One of the most remarkable experts, well acquainted with colonial history, declares that the letters of John Watts to General Monckton, published among the Aspinwall papers in the collections of the Massachusetts Historical Society (1871), present the best exhibit of political and public feeling just before the Revolution to be found in any contemporaneous papers. He was a representative in the general assembly, was attorney to Governor Monckton, and a member of the king's council from 1756 to the Revolution. He was the choice of the king for the appointment of acting-governor of New York in the event

<sup>1</sup> Her nephew, Sir William Howe de Lancey, born in New York, the beloved companion and chief-of-staff of Wellington, was mortally wounded at Waterloo. His

sister, wife of Sir Hudson Lowe, stationed at Saint Helena, was by Napoleon Buonaparte declared to be the handsomest woman he had ever seen.



of the failure of the Revolution. The estate of this gentleman, called "Rose Hill" after the family seat near Edinburgh, embraced that part of New York City bounded by Broadway, the Old Post Road, Twenty-eighth and Twenty-first streets, and the East river, containing almost the entire 19th and 22d wards, and a part of the 18th. This valuable domain was confiscated. A portion of it was subsequently bought back from the committee of sequestration, and became the property of Honorable John Watts, Junior, son of the exile.

The latter, as stated at the beginning of this article, was one of the most eminent citizens in the City and State of New York. In 1774, at the age of twenty-five, he became recorder of New York City, continuing in office until 1777, when the Revolution interrupted his functions. He was thus the last royal recorder of the city. He was a member of the assembly, and its speaker from January 5, 1791, to January 7, 1794; while from 1793 to 1795 he was a member of congress. He was the "first judge" of Westchester county, receiving the appointment to that office in 1806.

He was an able and careful judge, exhibiting sound judgment and judicial conservatism. An interesting manuscript volume, containing the proceedings of his court, has been preserved and is in the custody of the New York Historical Society, being the gift to that society of Mr. Edward F. de Lancey.

While partaking of his father's characteristic of loyalty to the existing government, Judge Watts was (like his father again) a fearless champion of the true rights of the people, and notable for his practical philanthropy. The elder Watts had been the only person who dared face the Earl of London and oppose his quartering his troops upon the City of New York in 1756. Smith, the contemporary historian, admits that the others in high life excused themselves from opposing the earl's course, while it was understood that Mr. Watts "spoke his mind in favor of the people." So was it with Judge Watts. He inculcated, as a principle of conduct in his household, that "a gentleman may treat an equal according to the exigencies of the situation, but must treat a poor man or social inferior with respect under all circumstances."

Judge Watts, Senior, was one of the founders, and afterwards president, of the New York Hospital, with very extensive powers and jurisdiction, and John Watts, Junior, was one of the founders, and after-



JOHN WATTS, JUNIOR.

wards president, of the New York City Dispensary. He was also the founder and endower of the Leake and Watts Orphan House, diverting for this purpose a fortune of \$1,000,000 which would otherwise have been his by inheritance.

Like his father, Judge Watts married into the de Lancey family, his wife, Jane, being the daughter of Peter de Lancey, "of the Mills," Westchester county, New York. Her mother, Elizabeth, was the daughter of Governor Cadwallader Colden.

Judge Watts' two sons, Robert and George, were officers in the service of the United States during the war of 1812. The last mentioned was aide-de-camp to General Winfield Scott, who eulogized him for his remarkable courage and coolness and credited him with having saved his own life from a treacherous attack by Indians in the British service just prior to the battle of Chippewa. His sons dying early, without issue, Judge Watts' estate was mainly divided between his two

grandsons, Major-General J. Watts de Peyster, son of his youngest daughter, "the beautiful Mary Justina Watts," and Frederic de Peyster, and Major-General Philip Kearny, son of another daughter.

The notable statue of Honorable John Watts, Junior, in Trinity churchyard, was erected by his grandson, General de Peyster. This work, with



KENNEDY AND WATTS HOUSES, NOS. 1 AND 3 BROADWAY.<sup>1</sup>

the statue in Bowling Green of another ancestor, Colonel Abraham de Peyster, an early mayor of the city and chief-justice of the colony, and acting governor in 1701, and both the gifts to the city of General de Peyster, are among the finest of the statues which the city boasts.

Honorable John Watts, Junior, has often been concisely characterized by his grandson, General de Peyster, as *vir equanimitalis*—two "words which exactly express his character, his firmness of bearing beneath a burden of affliction and suffering which led those acquainted with the extent of his losses and griefs to style him a 'Monument of affliction.'" So clear-cut was his analytical habit of thought, and so pointed and laconic his mode of expression, that the celebrated Honorable Samuel B. Ruggles was accustomed to declare that John Watts could "express himself more to the point on a page of note-paper than could most men on a sheet of foolscap."

<sup>1</sup> The site of the present Field or Washington building.



WELLS, JOHN (born in Cherry Valley, Otsego county, New York, in 1770; died in Brooklyn, New York, September 7, 1823), was graduated at Princeton in 1778, studied law under Edward Griswold, and in 1791 was admitted to the bar. He took a prominent part in the discussions in the press about the national constitution, advocating federalist principles, and became intimate with Alexander Hamilton. In this connection he sustained a leading part in the publication of the *Federalist*. Among his important cases at the bar were the Smith-Cheetham libel suit and the case of Griswold vs. Waddington—the latter being an action brought after the war of 1812, in which Mr. Wells took the ground that the war effected a dissolution of the partnership of the Waddington brothers, one of whom was a resident of New York and the other of Liverpool.



WENDELL, JOHN LANSING (born in Albany, New York, January 2, 1785; died in Hartford, Connecticut, December 19, 1861), received his legal education in the office of his brother, Gerritt Wendell, and was admitted to the bar at Albany. After serving as a judge of Washington county he was appointed reporter of the Supreme Court, which position he held for a long period. His reports of cases in the Supreme Court comprise twenty-six volumes and extend from 1829 to 1842. He also published a digest of Supreme Court cases (1836) and edited editions of Blackstone's Commentaries (1847) and Starkie's "Law of Slander" (1843).



WHEATON, HENRY (born in Providence, Rhode Island, November 27, 1785; died in Dorchester, Massachusetts, March 11, 1848), was a member of an old New England family.<sup>1</sup> His legal preceptor was Nathaniel Searle, and after his admission to the bar (1805) he rounded out his professional education abroad. After his return he practiced for a while in Providence, but removed in 1812 to New York City. During the war of 1812-15 he edited the *National Advocate*, in which he published a series of important papers on neutral rights. He filled, successively, the offices of division judge-advocate of the army (1814), justice of the Marine Court of New York City (1815-19), and reporter of the Supreme Court of the United States (1816-27). As reporter of the United States Supreme Court his name is connected in an enduring manner with the jurisprudence of the country. The reports published by him in that capacity—twelve volumes—are models of conscientiousness and intelligence.

During his service as reporter he was a delegate to the state con-

<sup>1</sup> His ancestor, Reverend Robert Wheaton, came from Wales and settled in Salem, Massachusetts, and afterward in Rhode Island.

stitutional convention of 1821, a member of the assembly (1823), and a commissioner, with Benjamin F. Butler and John Duer, to revise the statutes of the state. He also continued his legal practice, arguing various important cases. He was associated with Daniel Webster in the suit brought to settle the limits of the bankruptcy legislation of the state and federal governments.

He resigned his offices as Supreme Court reporter and state reviser to accept the position of *chargé d'affaires* to Denmark (1827-35). He was also minister resident and later minister plenipotentiary to Prussia (1835-46).

Returning to the United States he was the recipient of high honors. He was appointed lecturer on international law at Harvard, but in consequence of ill-health was unable to accept the place.

Mr. Wheaton's great work, "Elements of International Law," was first published at Philadelphia in 1836. It immediately enjoyed acceptance as an eminent authority and has been repeatedly republished. His other writings are numerous and varied, embracing valuable contributions to different phases of the literature of the law.

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HEELER, WILLIAM ALMON (born in Malone, Franklin county, New York, June 30, 1819; died there, June 4, 1887), was a student at the University of Vermont, but did not graduate. Soon after his admission to the bar (1845) he became United States district-attorney of Franklin county. He early took a strong interest in politics as a whig, and joined the republican party upon its organization. He served in the assembly, the state senate (being its president *pro tempore*, 1858-59), and congress (1869-77). He was president of the state constitutional convention of 1867. He was nominated for vice-president by the republican party in 1876 and took his seat as president of the senate in March, 1877. He retired from active life after the completion of his term.

As a lawyer Mr. Wheeler was a man of recognized ability, but a trouble of the throat compelled him to give up his active practice in 1851.

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HITTLESEY, FREDERICK (born in Washington, Connecticut, June 12, 1799; died in Rochester, New York, September 19, 1851), was a Yale graduate (class of 1818), was admitted to the bar in 1821 at Utica, removed to Rochester in 1822, and became prominent in that city, serving in congress (1831-35), as vice chancellor of the 8th judicial district (1839-47), and as judge of the state Supreme Court (1847-48). Later he lectured on law in Genesee College.





WILLARD, JOHN (born in Guilford, Connecticut, May 20, 1792; died in Saratoga Springs, New York, August 31, 1862), was admitted to the bar in Salem, Washington county, New York, in 1827, having received a collegiate education. From 1836 to 1848 he was judge and vice-chancellor of the 4th circuit, and in 1854 he became a member of the Court of Appeals. He served as a commissioner, by the appointment of President Pierce, to inquire as to the validity of Spanish and Mexican claims to California land-titles. He was elected to the state senate in 1861, and in that body rendered memorable service in simplifying the laws relating to murder and the rights of married women. He published a work on "Equity Jurisprudence" (1855), a "Treatise on Executors, Administrators and Guardians" (1859), and a "Treatise on Real Estate and Conveyancing" (1861).

He ranks among the distinguished jurists of the state, both as a judge and as a legal writer.



WILLIAMS, ELISHA (born in Pomfret, Connecticut, August 29, 1773; died in New York City, June 29, 1833), had for his legal preceptors Judge Tapping Reeve, of Litchfield, Connecticut, and Chief-Justice Spencer, of Hudson, New York. After his admission to the bar (1793) he practiced in Spencertown and Hudson. He was prominent in the state constitutional convention of 1821. He ranks with the very foremost practitioners of the first quarter of the century, and was an orator and *nisi prius* advocate of surpassing powers. He founded the town of Waterloo. He was one of the most influential men of Columbia county, was a leader of the federalists, and was repeatedly elected to the assembly of the state.



WOOD, GEORGE (born in Chesterfield, Burlington county, New Jersey, in January, 1789; died in New York City, March 17, 1860), was graduated in 1808 at Princeton, studied law with Robert Stockton, was admitted to the bar in 1812, began practice in New Brunswick, New Jersey, and advanced with great rapidity to a foremost place in the profession. He removed to New York City in 1831, and until the end of his career was counted among the ablest jurists of the metropolitan bar. He was frequently retained in cases involving constitutional questions. His name is especially connected with the development of settled doctrines of jurisprudence in matters related to charitable devises.



**OODRUFF, LEWIS B.** (born in Litchfield, Connecticut, June 19, 1809 ; died there, September 10, 1875), was graduated with honors at Yale in 1830, and studied law under Judge Gould in the school at Litchfield, being admitted to the bar of Connecticut in 1832. Soon afterward he went to New York City and formed an association with Honorable Willis Hall, which lasted until 1836. Later he was in partnership with George Wood, and also with Richard Goodman. In 1849 he was elected to the bench of Court of Common Pleas, as successor to Judge Ulshoeffer. He served in that office until 1855. From 1856 to 1861 he was associate-justice of the Superior Court. He then retired to private practice in association with Honorable Charles F. Sanford. From January, 1868, until the end of 1869 he was a member of the Court of Appeals, by gubernatorial appointment, and from the latter date until his death he was judge of the Circuit Court of the United States for the 2d judicial circuit, embracing the states of New York, Connecticut and Vermont.

Both as a counsellor and as a judge he was characterized by great learning, remarkable power of analysis and deep discernment. His decisions in admiralty and patent suits are particularly able and valuable.



**OODWORTH, JOHN** (born in Schodack, New York, November 12, 1768 ; died in Albany, New York, June 1, 1858), was one of John Lansing's law pupils, and in 1791 was admitted to the bar. In 1813 he published, in collaboration with William P. Van Ness, a revision of the laws of New York. He served in the assembly and senate, and was surrogate of Rensselaer county, attorney-general (1804-8), and Supreme Court justice (1819-28).



**ORDEN, ALVAH** (born in Milton, Saratoga county, New York, June 11, 1798 ; died in 1856), was educated at the Milton Academy, and then began the study of medicine, which he abandoned to engage in mercantile pursuits. He opened a large general store in Auburn, and enjoyed much success, but misfortunes swept away his entire possessions at the age of thirty-four. He then decided to study law, and his abilities enabled him to promptly take a very prominent place at the bar. He established, with Mark H. Sibley, the firm of Worden & Sibley. He was counsel in many highly important cases—notably the celebrated one of Griffith *vs.* Reed, in which he succeeded over Marcus T. Reynolds ; obtaining a decision which, although frequent efforts have been made to remove it, still remains law. He was one of the principal members of the constitutional convention of 1846, and was appointed one of the commissioners of the code, with Albert L. Robertson and Seth C. Hawley, in 1847. He declined a reappointment in 1849. Resuming his practice, he was

occupied, throughout the remainder of his active life, with litigations involving great interests. He participated successfully in this period in the memorable case of *Farmers' Loan and Trust Company vs. Carroll*.



RIGHT, SILAS (born in Amherst, Massachusetts, May 24, 1795; died in Canton, Saint Lawrence county, New York, August 27, 1847), was brought up on a farm, was graduated at Middlebury College in 1815, and engaged in the practice of the law at Canton. His career at the bar was soon interrupted by his energetic participation in politics, but meantime he had become prominent among lawyers of that section of the state, having been appointed surrogate of Saint Lawrence county. He began his public life as an intense partisan of the democratic party, and to that faith he adhered until his death. After serving in the state legislature and in the national house of representatives, he was elected (1829) comptroller of the state, and in 1833 he succeeded William L. Marey in the senate of the United States. He remained in that office until December, 1844, and from the latter date until 1847 he was governor of the state. He then retired to rural life.



ATES, JOHN VAN NESS (born in Albany, New York, December 18, 1779; died there, January 10, 1839), a grandson of Judge Robert Yates (q. v.), was a well-known practitioner of Albany. Early in his career he gained much notoriety by his controversy with Chancellor Lansing, who had adjudged him guilty of contempt for failing to observe the formalities of the Court of Chancery. (See the sketch of John Lansing.) He served as recorder of Albany for a number of years, and as secretary of state (1818-26), and was appointed by the legislature to add notes and references to the revised statutes. Among his published works are "Select Cases Adjudged in the Courts of the State of New York, Containing the Case of John V. N. Yates and the Case of the Journeymen Cordwainers" (1811), "A Collection of Pleadings and Practical Precedents, with Notes thereon" (2d. ed., 1837), and, in conjunction with John L. Tillinghast, a "Treatise on the Principles and Practice, Process, Pleadings and Entries in Cases of Writs of Error" (1840).



ATES, JOSEPH CHRISTOPHER (born in Schenectady, New York, November 9, 1768; died there, March 19, 1837), a son of Christopher Yates, who held the rank of quartermaster-general in the Revolution, was one of the prominent state lawyers of his time, practicing at Schenectady. He was mayor of that city (1798-1808), judge of the state Supreme Court, and governor (1823-25). He was one of the founders of Union College. The county of Yates was named for him.



ATES, ROBERT (born in Schenectady, New York, March 17, 1738; died in Albany, New York, September 9, 1801), was a legal pupil of William Livingston, and took a leading place at the bar of Albany, being admitted in 1760. He was distinguished in public life, serving in the provincial congresses of New York and having a hand in the drafting of the constitution of 1777. He was a judge of the state Supreme Court from 1777 to 1798, and during the last eight years of his service was its chief-justice. He was a delegate to the national constitutional convention and was a commissioner to determine questions of territorial ownership with the states of Massachusetts, Connecticut and Vermont.

Peter W. Yates, a member of the continental congress and a conspicuous Albany lawyer, was his relative.



OUNG, JOHN (born in Chelsea, Vermont, June 12, 1802; died in New York City, April 23, 1852), was the son of an innkeeper, and was largely self-educated. At the age of twenty-one he entered the law office of A. A. Bennett at East Avon, New York. Removing to Geneseo, he completed his studies under Ambrose Bennett, and in 1827 was admitted to the bar. He quickly secured a lucrative practice, ranking with the best jury lawyers of the times. Entering politics, he was a firm supporter of Andrew Jackson, then an anti-masonic leader, and finally a whig. He served several terms in the state legislature and in congress. In the legislature he was instrumental in the passage of the measure under which the constitutional convention of 1846 was held. He was elected governor in 1846, occupying the office from 1847 to 1849.



*John Young*



